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3300	2765-	-В	Affidavit of George C. Marshall, General of the Army of the U. S. (Retired) (1st Q. and I	A.)	46441

#### Friday, 2 April 1948 INTERNATIONAL WILITARY TRIBUNAL FOR THE FAR EAST Court House of the Tribunal War Ministry Building 3 4 5 Tokyo, Japan 6 The Tribunal met, pursuant to adjournment, at 0930. Appearances: For the Tribunal, all Members sitting, with 11 the exception of: HONORABLE JUSTICE JU-AO MEI, Member from the Republic of China and HONORABLE JUSTICE HENRI 13 BERNARD, Member from the Republic of France, not sitting 14 from 1500 to 1600. 15 For the Frosecution Section, same as before. 16 For the Defense Section, same as before. 17 18 19 (English to Japanese and Japanese 20 to English interpretation was made by the 21 Language Section, IMTFE.) 22 23 24 25

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MARSHAL OF THE COURT: The International Military Tribunal is now in session.

THE PRESIDENT: All the accused are present except SHIRATORI, UNEZU and HATSUI, who are represented by counsel. The Sugamo Prison surgeon certifies that they are ill and unable to attend the trial today. The certificates will be recorded and filed.

Mr. Cunningham.

MR. CUNNINGHAM: If your Honors please, this is an application for permission to file the affidavit of General George C. Marshall, retired General of the Army and the present Secretary of State of the United States, in behalf of the accused OSHIMA.

Comes now the accused OhHIMA, through his counsel, and respectfully applies to this Honorable Tribunal for permission to file in these proceedings the affidavit of the present recretary of rtate of the United States, former General of the Army George C. Marshall, and states as reasons for this application the following:

In December, 1946, counsel for this accused filed an application with this Tribunal asking for a subpoena for the affiant. The application set forth that the witness will testify from first-hand authority on the subject:

- 1. German-Japanese collaboration, military.
- 2. Preparation of the United States for the Pacific War.
  - 3. Japanese-American War no surprise.

At that time the witness was in Nanking, China, on a special mission. By order of this Tribunal Number 599, permission was granted to interrogate the witness and facilities were to be made available for this purpose. Application was made for travel orders but before the arrangements could be made for the trip to China the affiant was elevated to the post of Secretary of State. After that it was impossible to arrange for a personal interview.

Written interrogatories were submitted in September 1947, through military and diplomatic channels. Due to the pressure of other matters, the questions were not answered until March 10, 1948. The affidavit was received in Tokyo, Japan on March 29, 1948, by counsel for the defense.

A copy of the affidavit is attached to this application. Its content bears heavily upon the important issues in this case and answers specifically the matters raised in the original application. The document establishes with overwhelming weight from the highest source the evidence of the defense upon the issues

involved in Count 5 of the Indictment on the question of lack of collaboration between Japan, Germany and Italy. The document refutes clearly and convincingly the charge made by the prosecution that the three nations collaborated to dominate the world. It shows that there was a lack of cooperation.

It is in the interests of justice that this historic document prenared for this trial, be admitted as part of the record of these proceedings and be considered as part of the defense evidence. It is only fate and the pressure of the present world events which make this application necessary at this time.

Notice was given to the "ribunal on the 3rd day of February, at page 38,730 of the transcript, that the affidavit was being prepared and would be received, it was thought, before the close of the evidence in this case.

We submit that this "ribunal in its discretion has full control over the record in this case and has the right to accept evidence at any stage in the proceedings. Circumstances over which we had no control prevented this document from arriving before this time.

Out of restect for the statesmanship of the author of the affidavit and in recognition of his

wisdom and appreciation for his responsibility in taking his valuable time to execute an instrument of high probative value, and on account of the grave importance of the material covered in the affidavit, surely we can pause long enough to incorporate this useful document as an exhibit in this cause.

For these reasons, it is restectfully urged that the record in this cause be held open for the purpose of accepting the affidavit of George C. Marshall as an exhibit in behalf of this accused.

the defense case in order to enable you to tender that evidence. That is as much as you can do, Mr. Cunning-ham. No matter how great General Marshell may be, and no doubt is, that does not justify us in incorporating in the record an affidavit of his. We would not do it with an affidavit of Mr. Churchill's or any other statesman. Your application to have this affidavit incorporated in the record must be refused, but if you would like to ask us to reopen the case to allow you to tender this further evidence, then we shall have to consider your application. Until judgment we have complete control over our own proceedings.

I understand that there is already in evidence. or there was offered in evidence a similar statement by

General Marshall. I think we said on that occasion 1 that we could not allow even General Marshall to take 2 over our functions and decide issues which are for us 3 to decide. However, this affidavit may contain material which is relevant and material, -- I don't know, I have not read it. If it simply gives General Marshall's orinion, it must be rejected.

MR. CUNNINGHAM: I shall answer to both matters, your Honor. You have expressed my desire much more clearly than I have been able to express it, but I wish that the record of this case be reopened for the purpose of accepting the affidavit of General Marshall -- that is my first purpose. Now it is suggested from the table that the case of the defense be reopened for the purpose of accepting this document.

THE PRESIDENT: Well, we must hear the prosecution first.

MR. CUNNINGHAM: That is the first point. Now, on your second point, I subscribe heartily with what you said concerning the evidence which was introduced. The comment of the President at that time was, as I recall it: "Well, are we to accept the opinion of even George Marshall on such a matter?" -- that is, in substance.

THE PRESIDENT: Personally, I would accept his

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opinion; as a judge I am not allowed to do so. I want
    that made clear; this may be misunderstood.
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MR. CUNNINGHAM: On your second point, there is no necessity, I believe, in anticipating the objections of the prosecution. I should like to answer their objections as to the contents of the document when they have proposed the same to the Tribunal. I don't know whether the Tribunal will consider both questions, the reopening and the admission of the document, at the same time or whether they will take the objections to the reopening first and then the argument upon the admission of the document.

THE PRESIDENT: Well, it is desirable that we should deal with the whole matter at once, undoubtedly. I see no reason for dividing it, but my colleagues may take a different view. My opinion is that we should deal with it at the same time, deal with both matters together.

MR. CUNNINGHAM: In that event, I offer the document as an exhibit.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If the Tribunal please, in closing the defense case for OSHIMA, counsel said in substance, page 38,729-30: There are other Japanese documents and witnesses not ready for presentation at this time, and I want to retain the

privilege of presenting this evidence if the evidence of the other accused goes long enough to permit the receipt and processing of these documents.

The President replied: "Do not conclude from our silence that we are conceding anything to you. Already we can truthfully say that no Court has ever heard a defense more fully."

The defense desires now, in the last days of argument, to reopen the case for introduction of cvidence which, if admissible at all, should have been tendered in the general phase. The strict rules relating to the receipt of after-discovered evidence are well recognized, but this evidence does not reach that dignity.

An examination of the document will disclose two things: first, the questions posed call for speculative answers and opinion evidence, so much so, in fact, that in many instances the affiant in his answer states that the matter is purely speculative. And, second, the material, not objectionable on the ground mentioned, is purely cumulative. It is respectfully submitted that if this evidence in the exercise of due diligence had been discovered after the close of the case, it still would not be admissible under the after-disclosed evidence rule.

A casual reference to the document will

disclose that it is for the most part taken from defense document No. 1674, General Marshall's Report, an excerpt from which was introduced in evidence on 19 June, 1947, transcript 24,754. The defense document No. I referred to is General Marshall's Report from which an excerpt was taken and which he so frequently cites in the course of this document. Only a short excerpt was admitted in evidence or tendered in evidence from that document in June. In other parts of the record there are other excerpts from the same document. This is now an attempt to enlarge upon those excerpts which were introduced in an early phase of the case, a document which has been in the hands of defense counsel from the early days of this trial.

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THE PRESIDENT: Yes, Mr. Cunningham.

MR. CUNNINGHAM: In answer to the first suggestion of Mr. Tavennor, that we closed our evidence, I might say that at page 38,730, your Honor will recall, I announced to the Tribunal that 22 "nine months ago I submitted interrogatories to General Marshall. They are now in the process of preparation."

THE PRESIDENT: That excerpt was not ob-

jected to by the prosecution.

Well, now I raise the question of whether we should take even General Marshall's opinion.

What you are proposing to tender now doesn't go beyond the excerpt in substance, does it?

MR. CUNNINGHAM: Yes, your Honor. What I am offering now answers specifically the questions which we propounded to General Marshall, and in his excerpt he only gave a conclusion based upon the observations which he makes here, and they are the observations which we consider quite material and relevant.

Whalen & Morse

THE PRESIDENT: The affidavit contains the reasons for the material on which he based his opinion.

Is that what you are saying?

MR. CUNNINGHAM: That is right, your Honor, and I took my cue from what your Honor said at the time. We do not want the opinion, we want the facts, and I asked General Marshall for the facts and I believe he has given me the facts.

objected to the tender of General Marshall's opinion may, on reconsideration, see fit to allow the facts stated by General Marshall as the ground of his opinion to be admitted.

MR. TAVENNER: If it please the Tribunal, I think there is a distinction between facts as grounds for an opinion and his reasons.

THE PRESIDENT: Doesn't he say in effect -I have just glanced at the affidavit -- "These are the
grounds" "These are the facts" "These are the reasons
why I form that opinion," and he states them very fully.

MR. TAVENNER: He states considerations that he had in mind, he does not call them facts. The first one --

THE PRESIDENT: General Marshall wouldn't act on anything but facts. He may have to act on

assumptions sometimes, but surely not in that matter.

MR. TAVENNEH: The very first consideration was a question which he sold he didn't know the answer to.

THE PLESIDENT: Well, he could not have acted on that one. I am speaking of facts or grounds on which he did act. I didn't say you should admit the whole affidavit.

Of course, the weaker the grounds are that General Marshall may have had the stronger should be the reason for the presecution raising no objection.

Mr. TAVENNER: If your Honor please, the chief objection that I asserted is to the reopening of this case in the closing days of argument regarding a matter which to the greatest extent was in the hands of defense counsel from early in June.

THE PRESIDENT: That is a very strict if not a technical view, Mr. Tavenner. I emphasize, you allowed General Marshall's opinion to be tendered by the defense. Now they give us, or purport to give us, the grounds for General Marshall's opinion. Why shouldn't we have them without any further argument? You don't contest that that is General Marshall's affidavit, and you cannot contest that it is on a most vital issue in the case.

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only one page of this document. The rest of that material has been in defense hands, and I think this is not the right time, at the conclusion of the argument -- near the conclusion -- to go into matters that were not presented when they should have been presented.

As far as the answer to Question 1 is concerned, the matter to which you addressed your attention, that could very well have been introduced in behalf of the prosecution in explanation. I have no quarrel with --

pressure on you, Mr. Tavenner? You know that I would have rejected that excerpt and General Marshall's opinion would not have been in evidence if I had my way. But you allowed it in, and you may very well now allow us to know the reasons for his opinion. After all this isn't an application made to us after we retire to consider our judgment and before judgment, it is an application made in the course of the hearing.

Unless you wish to say any more, I don't want to hear any more either from you or Mr. Cunningham. We will consider the matter.

Statement if you will permit me to finish it.

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As I was stating, I have no quarrel with
the answer to No. 1 from the standpoint of an explanation of the reasons for his statement in his report.
Those reasons were not given in his report. But the
other matters referred to are matters which could have
been introduced at the proper time in the general phase
of the defense case.

THE PRESIDENT: Do I understand you to say
the reasons that General Marshall gives in his affidavit
for his opinion do not appear in this report from which
the excerpt was taken?

MR. TAVENNER: No, sir, I do not think that all of the reasons set forth in his answer to the first question appear in the report. Although I have no special objection to hearing his reasons, my objection did go to the entire document.

THE PLESIDENT: I didn't suggest you agree to anything other than the grounds upon which he based his opinion.

MR. TAVENNEH: I have understood that, and I have stated I have no quarrel with the first question particularly, question and answer.

THE PRESIDENT: Look at the afficavit and tell us whether you agree to any of it, referring to paragraphs.

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MR. T.VENNER: Yes, I will agree to the first question and answer.

THE PRESIDENT: Mr. Cunningham.

anything further to say, your Honor, except that some of the material covered in the answer to No. 1 is infiltrated into the answer to 2 and 4 and question No. 5, all relate to corroboration of the answer in No. 1.

THE PRESIDENT: We have to decide whether we will reopen the case. Mr. Tavenner can't do that for us. But he can admit a document or a part of it. We will confer on that matter.

Go on with KIDO. We can confer during the recess or luncheon adjournment.

Mr. Logan.

IR. TAVERNER: Yes, I will agree to the first

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Mr. Logan.

MR. LOGAN: If the Tribunal please, with the Tribunal's permission I desire to read the summation on behalf of the accused KIDO, Koichi.

wilderness of complicated and detailed factual matter which has been the outgrowth of the prosecution's case against the accused KIDO, it becomes necessary to analyze the charges against him in the full light of reality unencumbered by such interpretations on irrelevant issues as would lead to our inability to see the forest because of near-sighted examination of the trees. Composing a large portion of the prosecution's evidence is the KIDO Diary itself, voluntarily submitted for use by the prosecution as it saw fit. Interpretation upon interpretation caused by the wide chasm of the language barrier has hampered an accurate portrayal of the events.

2. The Charter as the basic document setting forth the offenses for which the accused is to be tried can well be divided into two distinct divisions, the first being Crimes /gainst Peace and the second Conventional War Crimes and Crimes Against Humanity. It perhaps would have been less complicated had this Indictment followed the Nuernberg pattern narrowed to four counts rather than its present 55, for in an

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enalysis of the case, such as we know the Tribunal desires, it becomes almost humanly impossible to touch upon the Indictment allegations with the fullness they deserve.

consist only of the planning, preparation, initiation and waging of aggressive war or a conspiracy to accomplish the same. Conventional Var Crimes and Crimes Against Humanity are such as are contained in the laws of war and as designated in the Charter.

We cannot subscribe to the belief that the Tribunal seriously considers the accused KIDO must answer to this latter category for he was neither a soldier in the field nor a formulator of policy regarding these matters. It is the former division -- Crimes Against Peace -- to which the prosecution has sought to attach the actions of KIDO.

4. Hovering over this entire proceeding has been the closeness of the accused KIDO to the Emperor of Japan and the accompanying interest which such would naturally arouse. Narrowing down to a brute frankness, shearing away subterfuge and unnecessary verbiage we are faced with answering the simple question of whether the accused is responsible for the accomplishment of aggressive war. Although at

one time a cabinet member occupying an insignificant and minor post, KIDO's chief attraction to the prosecution has been his activities pertaining to the era that led to the Pacific hostilities.

7. In his capacity as Lord Keeper of the Privy Seal the question must be answered as to whether or not he had any power and whether or not such power or influence as he might have possessed was used to perpetrate the offense of aggressive war or not. This issue simply stated is difficult of study and to this end we shall seek to organize our presentation in such a fashion as to assist the Tribunal to the end of arriving at what we consider an obvious verdict of innocence.

## A. CRIMIS AGAINST PEACE.

comparable sequence to the prosecution argument would be to force the defense to adopt a procedure not best fitted to relate the evidence as we view it but a sincere and earnest attempt has been made chronologically to answer in its entirety each and every allegation or charge and the citations of alleged evidence in support thereof made by the prosecution. A comprehensive and chronological account of KIDO's activities was rendered by him in his direct

testimony. We will not repeat it here, except when obliged to answer the prosecution's summation, but we ask the Tribunal to refer to it when necessary to ascertain the true facts. The task of answering the prosecution's summation has been made extremely difficult because with the facts it has intermingled argument and its own interpretation of the facts.

## I. BIOGRAPHICAL MATTER.

7. Marquis KIDO was born on July 18, 1889.

His grandfather, Marquis KIDO, Takayoshi was one of the three founders of the new government of Japan during the Meiji Era. KIDO's grandfather served in various ministries in the cabinet and played a prominent role in the drafting of the Constitution which established the Diet. His father, Marquis KIDO, Takamasa was Grand Chamberlain to Emperor Meiji's son who subsequently became Emperor TAISHO.

Thus in his home environment KIDO was imbued with the spirit of the new Japan and the promising future it had under constitutional government.

8. KIDO graduated from the Law College of the Imperial University of Kyoto in 1915 having majored in political economy and social science. On

(1. Tr. 30,716 - 31,211 2. Aff. par 4, Tr. 30,719) August 30, 1917 he succeeded to his father's title of Marquis and simultaneously became a member of the House of Peers. After graduating from college he joined the government service in the Ministry of /griculture and Commerce where he served until 1930 as an administrative official.

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9. In 1930 and upon the recommendation of Prince SAIONJI, Prince KONOYE, Beron HARADA, Viscount OKABE and others he was appointed Chief Secretary to the Lord Keeper of the Privy Seal which position he held until June 13, 1936. From then until October 22, 1937, he was President of He served in the First KONOYE Bureau of Peerage. Cabinet as Minister of Education from October 22, 1937, until May 26, 1938, (concurrent Minister of Welfare from January 11, 1938) Minister of Welfare from May 26, 1938 to January 5, 1939, and Minister of Home Affairs in the HIRANUMA Cabinet from January 5, 1939 to August 28, 1939, but retired from then until June 1, 1940, when he was appointed Lord Keeper of the Privy Seal upon the recommendation of Prince SAIONJI, Prince KONOYE, Imperial Minister MATSUDAIRA, Tsuneo, Lord Keeper YUASA and Baron

<sup>(3.</sup> Aff. par. 4, Tr. 30,720 4. Aff. par. 5, Tr. 30,721 5. Ex. 112, Tr. 725)

HARADA which position he held until November 1945.

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10. The undisputed evidence is that KIDO was a disciple of Prince SAIONJI, avidly following his teachings and reasoning as shown in many excerpts from his diary. Prince SAIONJI's penchant for advising that the government, the military, the court, and the Emperor act within the ambits of their respective spheres and in a constitutional manner made a deep . impression on KIDO. His diary reveals that some of the most important decisions which KIDO made while Lord Keeper of the Privy Seal were difficult because he kept foremost in his mind the thought that the various branches of the government should not usurp the powers and functions of other branches. If the Tribunal would bear in mind the fact that KIDO was a constitutionalist, it will more readily understand the actions which he took.

### II. THE KIDO DIARY.

11. At the outset we would like to point to a factor which may serve as a key for the padlock of confusion that has surrounded the involvement of KIDO in this case. The question might well be asked how did the prosecution acquire this KIDO Diary upon

(6. Diary, June 1, 1940. Ex. 2276 and errata Tr. 16,248 - 16,249, Diary, May 8, 1940, Aff. par. 129, Tr. 30,890-30,891. 7 Supra, par. 50, pp. 47 - 48)

which it predicated so much of its evidence and used as evidence itself? Was it stolen from KIDO? Was it forced from him by confiscation? Was he threatened or bribed into surrendering it to the Allied Powers? The answer is emphatically No! KIDO was advised on December 6, 1945, that he was to be arrested. was apprehended ten days later at which time he voluntarily and of his own free will and accord revealed to Lieutenant Colonel Sackett his comprehensive and voluminous recordation of the vital events during a chaotic period of Japanese history. As he said, he had nothing to hide or fear. He voluntarily caused his diary to be delivered to Colonel Sackett. Why did KIDO voluntarily reveal and turn over his diary? Was it because he knew that there were entries in it which would convict him or was it because he knew that the diary would prove his innocence? If he had been a criminal at heart, as the prosecution would and knew that the diary have this Tribunal believe, contained entries which would convict him, would it not have been a natural act for him to have destroyed the evidence? (8. Diary, Dec. 6, 1945, Aff. par. 2,

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par. 2, Tr. 30,716

10. Ibid.

11. Pros. Doc. 0003, Tr. 16,852.)

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express a desire that the Allied authorities actually comprehend the workings of a state that led to a disastrous result? Was it the act of a guilty conscience or of a man ashamed of the part he had played in his nation's future or was it rather an attempt on the part of a silent historian to educate the minds of those nations whose misunderstanding of Japan and its development led to direful results?

admits was written with no ulterior motive in mind
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and should not be doubted, like any other diary,
requires explanations. A diary is not kept for
publicity purposes. It is common knowledge that a
diary is kept for one's own information or use, and
none but the author can explain the meaning of the
entries. The Tribunal should not hesitate to accept
KIDO's explanations of his diary entries where it was
necessary for him to do so because as KIDO said, "Pressure of time prevented me at times from recording some
of the events and of recording others fully." It
would be a remarkable event if a person kept a diary
so complete that it needed no explication.

12. Par. JJ-7, T. 41050. 13. Aff. par. 2, T. 30717.

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tant point to be considered is the analysis and interpretation with a western mind of the English translation of KIDO's Diary. It is submitted that a Japanese explanation (such as KIDO's) of the Japanese original and a translation of the explanation into English is more reliable. KIDO knows what he wrote. He had a clear conscience with nothing to hide or fear as demonstrated by the voluntary revelation and delivery of the diary, and his explanations should be accepted. The diary was written at a time when he had no reason to record anything but the truth.

prosecution was faced with the tremendous task of translating into English or into the language of the Allied nations the Japanese writing so as to convey an identical or similar thought concept scattered through the record, from the introduction of the first diary entry to the close of this proceeding, is solid evidence that this was not done. As we said earlier in the trial, the translation from Japanese to English is at best a rough paraphrasing. Therefore, in the event of doubt certainly the issues should be resolved in favor of the accused. No diary entries conflict with KIDO's affidavit, although the prosecution claims some

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The incorrect translation of the excerpts do. submitted to this Tribunal, by the prosecution, with corrections made at the defense's request tucked away in subsequent pages of the record over objection, have not been conducive to a proper understanding of the diary. Scanned or rough translations were used by the prosecution, over objection. In one instance three translations were made of one entry and the one which was offered was very confusing. Tribunal observed, "KIDO's Diary was not well translated in the first instance, so we are told.

16. Only by reading the entire diary can a true picture be portrayed of KIDO, his actions and his innermost thoughts but that, of course, was a physical impossibility in this trial. The prosecution offered approximately 125 excerpts and an equal number was offered by the defense. Many of these 250 excerpts are small portions of the daily entries. In addition, out of the 5920 entries in his diary,

14. Par. JJ-9. T. 41052. 15. T. 37729; 10244 - 10245. 16. Aff: \*par. 24. T. 30751 - 30752.

Note: (The diary entries which KIDO complained of . 17. T. 37729. in his affidavit were referred to the Language Section and corrected: This may have been after the prosecution summation was written and the prosecution statement thus is excusable. Par. JJ-7, T. 41050.

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Aff. par. 3, T. 30717-30718.

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these 250 excerpts portray a very small cross-section of KIDO's actions and thoughts. The entire diary tells a different story than these few excerpts reveal. It is highly significant that the prosecution fails to point to one single entry out of 5920 wherein KIDO advocated war or aggression. In urging that KIDO's explanations of his diary should be accepted without question, we ask that the Tribunal consider the fact that the prosecution's translations, without KIDO's help, were incorrect and when they were brought to KIDO's attention he pointed out the errors of the translations to counsel, and invariably corrections were made. The fact that KIDO understands English imperfectly should not be criticised. to our burden. On the other hand, of all the excerpts which KIDO offered in his defense, and which were translated and approved by him after the translations were explained to him, not one was changed by the Language Section.

avoided the whole picture so that isolated single details could be stressed and strained. It failed to cross-examine KIDO on most of his diary entries and his explanations thereof. Apparently realizing 19. Par. JJ-7, T. 41050.

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that it failed to shake KIDO's credibility while he was on the stand ("THE PRESIDENT: There are no shortcuts to proper judicial determinations. Crossexamination still remains the principal means of testand realizing the absence of positive ing credit"), evidence that KIDO at any time voted for war, advocated war, or gave advice to anyone to wage war, the prosecution repeatedly urges that KIDO's explanations of his diary entries be rejected. The prosecution now says in effect -- do not accept the accused KIDO's explanations, we can guess what he meant. In other words, recognizing its mistake in failing to cross-examine KIDO on most of his diary entries and explanations, the prosecution asks the Tribunal to substitute its guesses unsupported by testimony for KIDO's explanations. Most of its guesses are contrary to other evidence in the case. It asks the Tribunal to hold that KIDO was a deliberately untruthful witness basing its contention on several instances of lack of recollection and in other cases where KIDO's explanation's do not coincide with the prosecution's guesses. In so far as the real issues are concerned, these instances are pitifully insignificant.

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20. T. 26221. 21. Par. JJ-8, T. 41051. 18. In his testimony VING pointed to at least seventeen misinterpretations of various diary entries by 22 the prosecution in its documents 0001 and 0003. The prosecution never cross-examined or challenged him on one of these. The same procedure of misinterpretation is being followed by the prosecution in its summation and on a larger scale.

# III. CORROBORATICE.

19. For gen rul effect only, although no specific reference save one or two in minor instances is made thereto in the remainder of the summation, criticism is directed at the withdrawal of certain affidavits from 22. Aff. par. 27, Tr. 30,756, Ex. 2251, Diery Jan. 28, Aff. per. 123, Tr. 30,882, Exs. 2262, 2268, 2269; 2270, 2271, 775, Disries Aug. 9, 1938, Mar. 31, 1939, Apr. 19, 1939, May 2, 1939, Aug. 4, 1939, Aug. 22, 1939. Aff. por. 127, Tr. 30,886, Ex. 2273, Diory Nov. 10, Aff. par. 138, Tr. 30,897, Ex. 619, Diary June 19, 1940. Aff. par. 139, Tr. 30,897, Ex. 1294, Diary June 27, Tr. 30,907, Ex. 627, Diary 1940. Aff. per. 151, T Sop. 14, 1940. Tr. 30,942, Ex. 1125, Diary Aff. par. 184, July 31, 1941. Aff. par. 224, Tr. 31,026, Ex. 1155, Diery Oct. 18, 1941. Aff. par. 238, Tr. 31,044, Ex. 1196, Diary Nov. 29, 1941. Aff. par. 239, Tr. 31,046, Ex. 1198, Diary Nov. 30, 1941. Aff. par. 283, Tr. 31,119, Ex. 1282, Diary Apr. 5, 1945. Aff. par. 285, Tr. 31,122, Ex. 1282, Diary Apr. 5, 1945.

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KIDO's order of proof. If there be any criticism, counsel assumes it as his responsibility and urges that no blame therefor should attach to KIDO. If any explanation is necessary, reference is made to the statement made by counsel at the time the affidavits were withdrawn that they were merely corroborative and contained no new It is a fundamental principle of law that no material. presumption arises from non-production of corroborative This is especially so where or accumulative evidence. KIDO was extensively cross-examined for six days, his testimony was straightforward, corroborated by other evidence, and most of it uncontested on cross-examination.

20. Furthermore, defense counsel have been vigorously criticized by the prosecution at times for offering testimony allegedly offensive to previous rulings of the Tribunal. The Tribunal's ruling on the admission of the evidence which was proposed to have been offered in KIDO's case to corroborate him further had been previously made on several occasions just prior to the time KIDO's case was presented. The Tribunal said on September 29, 1947, when evidence was offered which "\* \* \*substantiates the testimony of the last witness":

Per. JJ-8, Tr. 41,051-41,052. 23.

24. Tr. 31,645.

Amer. Juris. Evidence Reprinted from Vol. 20, 25. Amer. Juris. Sec. 188, p. 193.

Tr. 31,216-31,614.

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"THE PRESIDENT: That part of the affidavit was 1 not contested in the cross-examination, if I recollect rightly; that is to say, the first two sentences of paragraph 4."

"THE PRESIDENT: It seems to be repetitive, Mr. Yakaoka; unnecessary details of what is already stated in the affidavit of the last witness and not contested. I do not think any Mamber wants to admit it."

The objection was sustained.

21. When the affidavit of LATSUDAIRA, Yasumasa, was submitted to the Tribunal on behalf of the accused HIRCTA on Cotober 3, 1947, an objection was made by the prosecution to paragraph 2 of the affidavit on a ground that it purported to be information obtained from the accused KIDO as to what happened at the feeting of Senior The basis of the Statesmen on November 29, 1941. 18 prosecutor's objection was:

"This account therefore is merely repetition and if there are any differences, in my submission, it is not permissible to contradict KIDO's or supplement KIDO's written record of it by this witness' account of what KIDO said to him.

"THE PRESIDENT: Probative value is the test and Tr. 29,567-29,568.

28. 30.021.

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"THE PRESIDENT! That part of the affidavit was not contested in the cross-examination, if I recollect rightly; that is to say, the first two sentences of paragraph 4."

\* \* \* \* \* \* \* \*

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Mr. Yakaoka; unnecessary details of what is already stated
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and if there are any differences, in my submission, it
is not permissible to contradict KIDO's or supplement

KIDO's written record of it by this witness' account of

what KIDO said to him.

"THE PRESIDENT: Probative value is the test and

27. Tr. 29,567-29,568. 28. Tr. 30,021.

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I suppose we prefer the writing to what this witness will
tell us he heard from KIDO."
         The objection was sustained.
                                          Again when the
affidavit of Count MAFINO was offered by counsel on
KIDO's individual case, objection was made on the ground
among other things that it was repetitious.
                                                We pointed
out that the affidavit was corroborative, but here
again the objection was sustained, this time to the entire
              The Tribuns]'s attention was directed to
affidavit.
its ruling on Count LAKINO's affidavit at the time the
other affidavits were withdrawn. An examination of the
affidavits withdrawn, contrary to the prosecution's con-
          would disclose that they were corroborative
and could be relied upon to support KIDO's case. Further-
more, that there could be no such inferences is apparent
from the fact that the prosecution specifically stated
it did not desire to cross-examine eleven of these wit-
nesses, and it made no representation to the court at
                                              These were
that time that they were not corroborative.
withdrawn in the interest of saving time.
              Is it fair to offer criticism of an accused
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                                    Tr. 31,615.
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                                   Tr. 31,645.
     Tr. 30,024.
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     Tr. 31,617.
     Tr. 31,618.
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     Tr. 31,622.
     Tr. 51,645.
Par. JJ-6, Tr. 41,051-41,052.
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who took the stand for failure to produce further corroborative evidence especially when the Tribunal is asked
to accept guesses of what KIDO meant in his diary in
place of KIDO's well-founded explanations? If YIDO's
testimony was questioned, no witnesses were called in
rebuttal. There is an abundance of corroborative evidence of YIDO's case. Instead of calling someone on
rebuttal with personal knowledge, HARADA's diary referring
to a few minor points was offered.

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1045, a recess was taken until 1100, after which the proceedings were resumed as follows:)

MAISHAL OF THE COULT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: By a majority the Tribunal has decided to reopen the case to admit the affidavit of General George C. Marshall to the extent of the first question and answer. It is admitted to that extent and will receive the number already given to the excerpt, will bear the letter "B", if that letter has not already been assigned.

CLERK OF THE COUNT: Defense document No. 3300 will receive exhibit No. 2765-B.

(Whereupon, the document above referred to was marked defense exhibit No. 2765-B and received in evidence.)

THE PRESIDENT: Do you want it read into the record, Mr. Cunningham?

MR. CUNNINGHAM: Will it be satisfactory to read it -- the portion -- into the record at the end of KIDO's summation and not interrupt the record, as it corresponds to the beginning of the case of OSHIMA?

THE PRESIDENT: Yes, you may read it in the course of OSHIMA's case.

MR. LOGAN: Continuing KIDO's summation, paragraph 23, page 15:

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MR. LOGAN: Continuing KIDO's summation, paragraph 23, page 15:

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## THE HARADA-SAIONJI MEMOIRS IV.

Since the prosecution states that in its case against KIDO one of its principal sources of information is the HARADA-SAIONJI Memoirs, let us consider them. The prosecution criticizes KIDO because his affidavit contained no reference to them. first place, no excerpt from the HARADA-SAIONJI Memoirs was introduced in evidence against KIDO before he testified. In the second place, we had no desire to offend the Tribunal by initiating the introduction of evidence whose accuracy is highly questionable. When it was discovered that the prosecution was using them on cross-examination of some witnesses it finally filed the Memoirs, and the prosecution assumes that the defense studied them before KIDO testified. There is no evidence of this. It would have been a humanly physical impossibility to have scrutinized the 300 odd chapters of these Memoirs within the time allotted. Furthermore, we could not anticipate which part of the Memoirs, if any, the prosecution would use. The prosecution states that the Memoirs were filed and were under study by the They were defense three months before KIDO testified. KIDO commenced testifying filed on August 29, 1947. (38.

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Par. JJ-6, T. 41049. Par. JJ-11, T. 41053. Par. JJ-32, T. 41071. Par. JJ-11, 41053.)

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October 14, 1947, which was only one month, fifteen days previously. Furthermore, KIDO's affidavit was served on October 3, 1947, and we believe the Tribunal realizes that for a long period of time prior to October 3, 1947, time was not wasted by counsel on the examination of memoirs such as HARATA's. After the affidavit was completed only a brief examination of a few items was possible.

part of its summation in its endeavors to bolster the HARADA Memoirs. We submit that they are entitled to no weight whatsoever. All the circumstances surrounding the preparation of these Memoirs make their accuracy extremely doubtful. Before offering any of the excerpts in evidence the prosecution apparently had grave doubts about the HARADA Memoirs, and as will be shown it had reason to have doubts, because it first introduced evidence as to HARADA's mentality, although the defense had never raised such an issue. As a matter of fact, KIDO, when cross-examined, had testified that HARADA,

"\*\* \*\*showed no signs of going out of his mind." The prosecution's procedure was novel but in view of the facts developed, its doubts were well founded.

25. The prosecution asks the Tribunal (42. T. 31574.)

"\* \* \*to accept without hositation the evidence of Dr. (with slight modification as to 1941 and MURAYAMA" 1942 -- referring to testimony of Dr. SASSA, which indicates the prosecution accepts Dr. SASSA's testimony.) Dr. MURAYAMA testified that he treated Baron HARADA from 1922 until the time of his death. He positively asserted that Baron HARADA had no other doctors. Dr. SASSA was called by the defense and was not cross-examined by the prosecution. He produced his clinical records, which have not been contested, and which showed that he treated Baron HARADA from March 15, 1941, until his death, and that Baron HARADA was also treated by three other doctors, SASAKI, SONEDA, and KATSUNUMA. Dr. MURAYAMA testified that HARADA was affected by thrombosis of the brain for the first time in August, 1943. testified that from 1922 to 1941 Baron HARADA had several illnesses only, none of which were serious, and he suffered only from colds or indigestion. statements also are not true. Dr. SASSA's clinical record showed that HARADA told him on March 15, 1941, that about two or three years prior thereto he experienced

Par. JJ-11, T. 41055.

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difficulty in speaking. Thus he was seriously ill in 1938 or 1939. Dr. SASSA's clinical record also shows that on August 22, 1942, HARADA told him, "About five or six years ago, his left arm and leg became numb, but had recovered after a week or so." This latter illness undoubtedly is the one in 1937 to which KIDO previously referred on cross-examination. The prosecution overlooked this in summation. Dr. SASSA's diagnosis of HARADA's condition on August 22, 1942, was "\* \* \*paresis of the right half part of body and there is fear of aphasia -- 'thrombosis of the brain.'" Fxhibit A, attached to his affidavit but not read, also shows "thrombose" at that time. This affliction was one year before Dr. MURAYAMA swore that HARADA became ill. Yet Dr. MURAYAMA also swore, "I had opportunities to see him two or three times a month," 52 and repeated his assurance that the first time HARADA contracted thrombosis of the brain was in 1943. He further testified that he never heard of Baron HARADA having a paralytic condition in 1937. Dr. MURAYAMA was confronted with an excerpt from KIDO's Diary of February 27, 1937, 38686.

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(subsequently admitted in evidence) which reads as follows: "At half-past eight HARADA called at my home. I was greatly surprised to learn that he was suffering from nervous prostration and that the left half of his body was semi-paralyzed. I advised him urgently to take care of himself." It is significant that the prosecution also ignored this diary entry in summation in what we consider its attempt to attack KIDO's credibility Even after hearing this read to him, the doctor refused to admit that HARADA was semi-paralyzed in 1937. ever, he did testify that paralysis or semi-paralysis was caused by a blood clot, that a blood clot on the brain causes pressure and is likely to affect the memory. It is submitted the foregoing undisputed documentary evidence written by Dr. SASSA at the time of the occurrence of the events recorded utterly discredits Dr. MURAYAMA who testified from memory. Yet the prosecution asks the Tribunal to accept his testimony unhesitatingly. It is paradoxical that the prosecution makes light of HARADA's memory of his report of previous illnesses to Dr. SASSA, yet it asks the Tribunal to accept his exact recollections in his Memoirs of exact quotations of various conversations which took place at considerable (56.

Ex. 3879, T. 38683.

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periods of time previous to the dates on which they were dictated.

26. The evidence leaves in grave doubt which version of HARADA's Memoirs is before the Tribunal. The prosecution called Prince KONOYE's sister-in-law. She testified on direct that HARADA used to dictate to her" \* \* \*once or twice a week from notes and from She admitted, on cross-examination, however, that there were occasions when she took the dictation once every three weeks. She testified, on direct, that HARADA never suffered from drowsiness when When she was asked, on he was keeping the records. cross-examination, as to whether he became sleepy while he was dictating or while he was talking to someone, she said, "I cannot say there were no such occasions." She admitted, on cross-examination, "He was often slightly ill or indisposed." She also admitted, on cross-examination, that once in a while Baron HARADA appeared abstracted as though he was thinking of something else when he was speaking to someone, and she got the impression that once in a while he did not under-She also admitted stand the replies that were made.

(60. T. 37464.

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62. T. 37466.

63. T. 37465.

64. T. 37490.

65. T. 37491.

that the regularity of her visits to Beron HARADA depended on his health.

27. Mrs. KONOYE also testified as to the method of the preparation of the Memoirs. On direct, she testified that she took notes from Baron HARADA in shorthand, transcribed them, gave them to Baron HARADA for approval, HAMADA later took them to Prince SAIONJI for corrections and suggestions, which were incorporated in the completed form, which she wrote in her own handwriting, and which is the photostatic copy in She stated he dictated from memory and evidence. She also admitted, on cross-examination, after being shown one of Baron HARADA's original diaries, that on subjects other than person's names, HARADA dictated to her from memory, and there were many occasions when he dictated from memory and not from his She admitted that after Prince SAIONJI pocket diary. edited the Hemoirs, she rewrote them. She also stated that when the Memoirs came back from Prince SAIONJI, they were put in a vault at the Sumitomo Bank, and when asked if anyone else made any corrections on them, she She admitted that the replied, "There were people."

(66. T. 37471.

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67. T. 37462.

69. T. 37473.

71. T. 37483.

novelist SATOMI, Ton, made corrections on the Memoirs. She also admitted, on cross-examination, that she rewrote the document which HARADA had taken to SATOMI for correction, and SATOMI corrected the rewritten copy of that document, which she rewrote again, and that that is the photostatic copy in evidence. She left the witness stand at four o'clock and when she came back the next morning, after the prosecution had an opportunity to talk with her, she changed her story. She had acknowledged that she did not have a good memory. ing her testimony on cross-examination, the prosecution expressed the desire regarding one question, "\* \* \*to tear it up completely.\* \* \*" She changed her story, over objections, to say that the photostatic copy contained corrections and notifications made by Prince SAIONJI, and SATOMI's corrections were made on another This new story, however, disagrees with HARADA's own statement.

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24 (72. T. 37483-4. 73. T. 37489-90 25 74. T. 37511.

76. T. 37502.

28. In the first excerpt from HARADA's diaries, which the prosecution offered in evidence, 3 HARADA says:

"This is the way in which these memoirs 5 are being made. Every week, I go to see Prince 6 SAIONJI and made a report to him; my memorandum for 7 this report is used as the basic materials and I have 8 it taken down and kept. I then take the transcribed menuscript of the notes to SAIONJI; he reads the material personally, corrects mistakes, and adds whotever additional notes he deems necessary to the manuscript. He returns it to me the next time I go to see him. A clean copy of this is made; this is then edited and filed away."

29. Thus it appears from HARADA's own statement that after SAIONJI made his corrections and additions a clean copy of it was rade, which was edited and filed away. Edited by whom? SATOMI? This agrees with the story Mrs. KONOYE gave on cross-examination. There have been some informal statements made by the prosecution which throw more confusion on the photostatic copy in evidence. The prosecution represented to the Court: "We have got a photostatic copy of what my friend calls 'B'. That is to say, the fair copy which Ex. 3751-A, T. 37,552.

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was made by this witness after Prince SAIONJI he 1 made his corrections on the original draft and 2 incorporating those corrections." This confirmed 3 HARADA's statement quoted above. Five days later, on Jenuary 25th, 1948, the prosecution changed its position. It stated: "\*\*\*it appears that I was mistaken in informing the Tribunal that the thing which had been photostated was 'B', the fair copy. is, in fact, 'A'" 79 "A" has been designated as Thus it rejects HARADA's the original volume. 10 statement and reaffirms Mrs. KONOYE's third story. 11 The prosecution stated that the photostatic copy had 12 corrections made by HARADA and corrections made by although there is no evidence by any SAIONJI, witness we know of that the photostatic copy shows 15 changes by HARADA or what they were. This, of course, 16 disagrees with the prosecution's own exhibit where 17 18 HARAD? has stated that the clean copy was edited and 19 In accordance with the Tribunal's ruling filed away. 20 that statements of the prosecution not supported by 21 the evidence will be rejected, we ask that these 22 statements be rejected. 23 24 80. 25 83. T. 13,483-13,484

Ex. 3751-1, T. 37,552

Out of the welter of testirony, and oral submissions by the prosecution, it is submitted that the only conclusion is that Mrs. KONOYE was telling the truth when she said, on cross-examination, that the photostat was unde of the Memoirs after they were edited by SATOMI.

31. The question of the accuracy of the HARADA Memoirs is very doubtful from Mrs. KONOYE's testimony. As shown, she admitted on cross-examination that HARADA's dictation was bostly from memory and an examination of the Memoirs will show that at one sitting she took dictation regarding many conversations which HARADA had at various tires with numerous people. Human experience dictates that it requires a genius to accurately quote conversations held as long as three weeks prior to the time of the recording, and HARADA has never been presented to this court as a genius. On the contrary, Mrs. KONOYE testified, on direct, that he was about average in methodical methods of work, being neither outstanding nor lax She further in the organization of his work. testified:

"Q. And the way you wrote the entries, isn't it true, Mrs. KONOYE that it would be difficult 84. T. 37,464

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for one to determine whether Baron HARADA was referring to the present tense or past tense, and it was difficult to determine the predicate and the subject of the sentences, and it was also difficult to tell who was saying what?

"A. There were many portions which were as you have indicated."

She also testified:

"A. When I was transcribing my notes, I had great difficulty in trying to discover just what portion in a given sentence was the subject."

"Q. And I suppose you did the best you could and wrote it out the way you thought it should be, is that right?

"A. Naturally, yes."

examination, that she thought SATOMI was employed
"...to make it grammatically correct, to figure out
whether Baron HARADA was referring to the present
tense or the past tense and who was speaking in the
various conversations, \*\*\*." The rere fact that
SATOMI was employed for this purpose shows how
unreliable the Memoirs are irrespective of which edition

85. T. 37,486 86. T. 37,487 87. T. 37,485

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was photostated. In the face of this, how unreliable any translation must be. If the copy in evidence is not the one on which SATOMI made these corrections, then the translator must surely have resorted to guessing.

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33. KIDO's testimony that HARADA was ill in 1937 is thus corroborated. In view of the foregoing testimony of Dr. SASSA and the excerpt from KIDO's Diary, can the prosecution be serious in making the bald statement that there is no evidence HARADA was ill during the period he was dictating to Mrs. KONOYE? To say that KIDO's statement that HARADA was ill is "clearly untrue" because of the evidence that he traveled during this time is not understandable. He was able to travel. He was paralyzed when he called on KIDO on February 27, 1937 as shown in KIDO's Diary. 88. It is also respectfully submitted that with men's lives at stake, the accuracy of HARADA's quotations of the exact statements made by various people should be viewed with extreme scepticism. It may be true that he held conversations and was reporting on the subject matter of the conversations, but it would be contrary to all concepts of justice that the exact words used be accepted by this Tribunal as accurate. In view of Mrs. KONOYE's testimony, it is also extremely doubtful if the persons whom HARADA says he is quoting were the persons who made the statements.

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88. Ex. 3879, Tr. 38683.

34. Lacking evidence establishing the accuracy or credibility of the HARADA Memoirs, a retreat is made to argument. Can the prosecution, in this important trial, be serious in representing to the Tribunal (and incidentally confessing its doubts) " \* \* \* even if he sometimes missed some part of what was being said to him, that is no indication that he has invented or distorted those things which he has recorded. No witness has attacked his honesty \* \* \*"89. If he missed part of a conversation, his recordation would be distorted. Let us review what was said:

KOISO: "A. Absolutely no. I have heard that that has been entered in HARADA's diary, but that is completely without foundation. It is a complete falsehood and a fabrication on his part."90.

"A. I have discovered that several times he has twisted what I said and has told lies based on that. And I believe he must have fallen into this practice because of his own subjective view that I was an advocate of the Tripartite Pact, and that is why I deny the portion of the HARADA diary which you just read to me."91.

Par. JJ-11, Tr. 41055. Tr. 32326. Tr. 32406.

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"A. Although I do not doubt Baron HARADA's capability nor his sincerity and good faith, still I think there is room for doubt whether he was conveying the truth and the full facts in every case-every instance."92.

ARAKI: "A. Well, he may have interviewed important influential people. He may have interviewed others of the hoi polloi, I do not know. But, I do not think that his reports were necessarily accurate or important."93.

TOJO: "A. \* \* \* just a sort of high class information broker. \* \* \*"94.

35. KIDO, when asked on cross-examination, pointed out that the memoirs were only inaccurate and incomplete.

KIDO: "A. I cannot now say for certain that I did talk to HARADA in exactly that fashion."95.

"A. \* \* \* I am somewhat surprised at the strong language employed."96.

"A. However I feel that HARADA might have been under a misapprehension when he penned such a statement as this." 97.

92. Tr. 28984.

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Tr. 28326, 28331-28332. Tr. 36656-36661.

. Tr. 31448.

"A. I do not recognize much accuracy in the writings of HARADA."98.

"A. But neither can I believe he wrote down everything I said just as I said it." 99.

"A \* \* \* HARADA must have left a great deal out of our conversation."100.

V. KIDO HAD NO CRIMINAL MIND.

36. Sheared of all superfluities, the prosecution must establish by clear and convincing proof that KIDO had a criminal mind. The prosecution perhaps unwittingly but nevertheless in no uncertain terms demonstrates that he did not.

KIDO was more interested in seeing that agreements were reached no matter what they were so long as they did not disturb the internal peace of Japan. 101. It is true that KIDO was very much disturbed and worried about affairs in Japan and was anxious about internal disturbances. He had just cause to be disturbed when we consider the uprisings, planned coup d'etats, revolts and assassinations which had occurred. It is clear that had any of these disturbances come to 98. Tr. 31530.

<sup>99.</sup> Tr. 31574. 100. Tr. 31575.

<sup>101.</sup> Par. JJ-51, Tr. 41090; Par. JJ-72, Tr. 41109; Pros. Doc. 0003, Tr. 16847.

fruition it would have been impossible to hold back the tide of the internal situation moving toward the end which KIDO was trying to prevent. The tide would have taken its own course more decisively. He was striving to the best of his ability not to give a chance to radical positivists, and while reducing their evil influence to a minimum degree, he attempted readjustment of the internal situation by making use of events as they presented themselves to change the trend of events toward a greater goal, i.e. world peace.

38. His concern for the effect which would be brought about by a disturbance of the internal peace such as the elimination of those close to the Throne who were in favor of peace is set forth fully in his diary of April 14, 1939, in a conversation he had with Foreign Minister ARITA about the Tripartite Alliance.

"If we should make a mistake in disposing of the matter I was afraid, as a problem of home administration, it should result in leaving to posterity the root of more calamity than that caused by the problem of the London Naval Treaty, and as a result 102. Tr. 31316-31322.

of it the so-called Senior Statesmen would necessarily and positively be eliminated."103.

39. His diary entries of August 7, 1941 104. and October 9, 1941 105. also show in his counsel to KONOYE that KIDO advocated Japan should bear ten or fifteen years of hardship and privation. Here again, he thought that during this period a change of situation would occur so that Japan could effect political reconstruction. 106. Certainly these thoughts of his expressed in his diary clearly show that his was not a criminal mind.

- 40. We now come to an extremely important consideration. The prosecution has summarized and evaluated KIDO's mental attitude on a number of occasions, three of which are as follows:
- (1) "His particular concern was always to avoid internal quarrels in Japan. He did not so much mind what they agreed upon so long as they agreed."107.
- (2) "He was not so much concerned as to what kind of alliance was made with Germany so long as they avoided quarrels in Japan."108.

103. Aff. par. 115, Tr. 30874-30875.
104. Ex. 1130, Corrected by Language Section Tr. 10667.
105. Aff. par. 200, Tr. 30960-30961; Ex. 1146,
Corrected by Language Section Tr. 11139.
106. Aff. par. 187, Tr. 30946-30947.
107. Pros. Doc. 0003, P. 45, Tr. 16847.
108. Par. JJ-51, Tr. 41090.

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(3) "We submit that KIDO was only interested

in securing agreement, no matter what it was."109.

41. The first is a general appraisal of his mind unrelated to any particular action of his. The second reference is to the advice he gave on the question of whether Japan should enter into a military alliance with Germany and Italy. The third is an estimation of the counsel he suggested on October 13, 1941 that KONOYE should try to promote mutual understanding between the War and Navy Ministers to which the prosecution observed, "Obviously this could only be done by one or the other giving way."110. The law of this case is that the burden of proof is on the prosecution to prove guilt beyond a reasonable doubt. Thus the prosecution has the burden of proving KIDO conspired to and did wage various declared or undeclared war or wars of aggression, etc. as set out in the Indictment (assuming for the purpose of this argument but not conceding that the Indictment follows the Charter). But the prosecution repeatedly contends that his counsel and advice was that he was not concerned with what they agreed upon so long as they

109. Par. JJ-72, Tr. 41109. 110. Par. JJ-72, Tr. 41109. 111. Tr. 22-23.

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agreed. (By "they" it is obvious the prosecution refers to other people and not KIDO). This can only mean that the prosecution's position is that KIDO was not interested in whether the decision reached was part of a conspiracy to wage declared or undeclared war or wars of aggression, etc. or the waging thereof; or whether it was for a defensive war or peace or any halfway measure. The prosecution says that all he wanted was that some decision be reached. Thus it logically follows that the prosecution's position is that in advocating some decision be reached, KIDO was perfectly satisfied if it was a decision to commit some act not charged in the Indictment -- for example, peace. He is not charged with conspiring to commit or committing some act -he is charged with conspiring to commit and committing the acts set forth in the Indictment. The only conclusion which can be drawn is that the prosecution admits it has failed to sustain the burden that he conspired to commit or committed the acts set forth in the Indictment. Furthermore, in so far as the conspiracy is concerned, any contention that he did not resign even though his counsel was not taken is immaterial. Under the theory of conspiracy one must conspire ahead of time, not after the act is completed.

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Even though he continued in office, the prosecution's position by citing other instances is that he gave similar advice on subsequent occasions. By staying in office and trying to hold back the trend toward war KIDO demonstrates the necessity of public officials assuming office to fight the forces of evil. The prosecution's attempt to create law to fit KIDO's case 112. does not pass the test of reason. By saying with respect to all his advice, "He did not so much mind what they agreed upon as long as they agreed,"113 we submit the prosecution admits it has failed to sustain its burden. On the basis of the prosecution's own contention, the counts should be dismissed as to KIDO.

42. The prosecution in reply to the motion to dismiss admits, "His particular concern was always to avoid internal quarrels in Japan."114. Bearing in mind the many years KIDO devoted to prevent assassinations, uprisings and revolts in Japan and in some of which he was a target, the Tribunal's attention is directed to two other statements of the prosecution in its general summation, 115. wherein it 112. Par. C-17, Tr. 39050; Par. C-24, Tr. 39057-58.
113. Pros. Doc. 0003, P. 45, Tr. 16847.

114. Ibid. 115. Tr. 38962-38963.

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must have overlooked KIDO:

of these accused that they had the first obligation and duty to set their own house in order, to the extent of providing ample security from assassination of their own national leaders, before they proceeded on with this vast scheme to confer the benefits of Japanese civilization throughout such a great part of the world."

2. "\* \* \* The record in this case clearly
proves that Japan needed to defend itself not against
forces from without, but from the evil, malignant
and ruthless elements in the heart of its capital."

This is precisely what the prosecution in its individual summation says KIDO was doing. If there was ever a man unjustly prosecuted it is KIDO. The prosecution admits he was opposed to the evil it condemns. It even goes further and admires his actions in saying: "No doubt if his advice had been taken we should not be holding this trial today. \* \* \*"116.

What a commendation considering the position of Japan and her people today. Notwithstanding this, it condemns him.

116. Pros. Doc. 0003, Tr. 16852.

43. KIDO's aversion to war is best exemplified in his diary entry of October 20, 1941, after the appointment of TOJO:

"I told His Majesty that one mistaken step
taken in the present cabinet change might have inadvertently plunged us into war. After careful consideration I believe this to be the only way of giving
a new turn to the situation and had thus recommended
it."

man whom the prosecution has branded as a criminal, a murderer, 119 a gangster, 120 an aggressor at heart?

Yes, these are KIDO's words.

with silence not only in cross-examination but also in summation. Why? Because it strikes at the heart of the prosecution's case against KIDO. It does not fit in with its theory that KIDO had a criminal mind and that he recommended TOJO to lead Japan to war. The weakness of the prosecution's case is emphasized by its silent approval. By its silence there is only one conclusion. Apparently the prosecution concedes the fallacy of its theory.

117. Ex. 1157, Tr. 10295. 120. Tr. 31544. 118. Indictment. 121. Tr. 16852.

119. Ibid.

any inflammatory speeches or harangues by KIDO beating war drums or advocating aggression. It just is not there. It exists only in the prosecution's mind. The evidence is that KIDO was conciliatory, cultivating peace, using his skill to make it bloom. The evidence is that KIDO, well knowing that force destroys those who use it, tried to avoid force and at all times advocated prudence and patience as the method of finding ways to settle Japan's problems.

that no entry from KIDO's Diary has been produced from either side which shows that he opposed any aggression because it was morally wrong or contrary to international law or treaties, we wish to recall that on cross-examination, when requested to do so by the prosecution, he pointed out twelve different instances where he advised against aggression. The prosecution did not pursue the question further. Although the burden is on the prosecution to show he was in favor of aggression, and there is no burden on KIDO to show he was not unless the prosecution had sustained its burden, which it has not done, we are nevertheless willing to accept its challenge and point out to the 122. Tr. 31400-31401-31402-31403-31404.

Tribunal some of the entries of KIDO's Diary which show he opposed aggression in contradiction of the prosecution's bald statement. June 23, 1931<sup>123</sup>.

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"Learned from HARADA deplorable information concerning a serious scheme in Manchuria on the part of some military officers." June 26, 1931 124.

"\* \* \* Called on the Lord Keeper at his official residence and reported to him concerning the information on a conspiracy in China contrived by the military in conjunction with some adventurers." September 22, 1931 125.

"The determination of the military circles towards Manchuria is so strong that it is feared that orders given by the central authorities may not be thoroughly understood." November 13, 1931 126.

"Agreement in opinion has been reached regarding the fact that a deep concern rather than grief is being caused over the present state of the country having no national measures relating to the

123. Ex. 3340, Aff. par. 10, Tr. 30728. 124. Ex. 3340, Aff. par. 10, Tr. 30728-30729. 125. Ex. 179-I, Tr. 1938, as corrected by Language Section, Tr. 34266-34267. 126. Ex. 3340, Aff. par. 22, Tr. 30742-30743.

so-called 'Northward Advance Continental Policy' held forth by the military, by which the country is being vainly dragged along."
February 4, 1932 127.

"HARADA said that when he saw Finance
Minister TAKAHASHI, the Minister was deeply anxious
about the positive actions of the Army, saying that
if things went on as they were, Japan would lose the
confidence of the powers \* \* \* and reported the purport to the Lord Keeper."
128.
February 16, 1932

"At 4 p.m. had an interview with Dr. TACHI at HARADA's and heard his opinion about the relations between the new state in Manchuria and Mongolia and the Nine Power Treaty. His opinion is that from the standpoint of international common law the open intervention on the part of our countrymen could not but be regarded as violation of Article I of the treaty."

February 17, 1932

"His Majesty is deeply concerned about the Shanghai Incident and the attitude of the League of Nations in regard to the incident. I was deeply impressed when hearing the Lord Keeper's report and

127. Ex. 3340, Aff. par. 28, Tr. 30756-30757. 128. Ex. 3340, Aff. par. 31, Tr. 30761-30762. 129. Ex. 3340, Aff. par. 32, Tr. 30762-30763.

could not help sympathizing with His Majesty in his anxiety."

August 2, 1938 130. 2

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"1. In dealing with the present Incident, we are to adopt the policy of nonaggrandizement in order to avoid a war with the USSR.

"2. We are to solve this problem by diplomatic negotiations and if the developments thereof make it necessary, we had better withdraw from the Changkufeng line." September 26, 1940<sup>131</sup>.

"It is indeed regrettable that such measures are taken by those in the field who do not understand the general situation. It is people like this who make the grave blunders." December 3, 1940<sup>132</sup>.

"After the present war, there is little doubt that the only uninjured countries will be the USSR and the United States, while others would be exhausted. Then Japan will be placed between the two powers and subjected to an extremely enduring hardship.\*\*\*\* So provided that we are prepared for ten years of hardships and cultivate a morale based

130. Ex. 3340, Aff. par. 100, Tr. 30854-30855. 131. Ex. 643, Tr. 7049-7050. 132. Ex. 3340, Aff. par. 161, Tr. 30914-30915.

on simplicity and virility, I believe it is not so difficult to emerge favorably in the end." July 31, 1941<sup>133</sup>.

"There are several means to be tried regarding the relationship between America and Japan. We must deliberate patiently on the matter in a constructive manner. I would urge the premier's careful consideration on this point." August 2, 1941 134.

"Under these circumstances, we would be threatened by an acute national crisis, if we made any mistake in our diplomatic moves." August 7, 1941 135.

"6. If the above-mentioned were true, we must reach the conclusion that our war with the U.S.A. would be a hopeless one." September 6, 1941 136.

"\* \* \* the Emperor should give a warning in conclusion that the Supreme War Command should exert every effort in order to bring about a diplomatic 133. Ex. 1125, Tr. 10186, as Corrected by Language Section, Tr. 10667.

134. Ex. 1129, Tr. 10196, as Corrected by Language Section, Tr. 10667.

135. Ex. 1130 Tr. 10190 as Corrected by Language

135. Ex. 1130, Tr. 10199, as Corrected by Language Section, Tr. 10667.

136. Ex. 1135, Tr. 10216, as Corrected by Language Section, Tr. 31420.

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success inasmuch as the present decision was such an important one that it might lead to a war in which our national fortunes would be staked." October 9, 1941 137.

"1. The resolution of the Council in the Imperial presence on the 6th of September seemed to me too outright. It was not the conclusion of exhaustive discussion in my opinion.

"2. Judging from the situation both at home and abroad, it is very difficult to predict the outcome of war with the U.S.A. So we had better reconsider it.

"3. It would be inadvisable to declare war against the U.S.A. immediately." October 13, 1941 138.

"I expressed my opinion to him. Our conclusion of the talk was this: The Premier should make an effort to promote mutual understanding with the War and Navy Ministers." October 16, 1941 139.

"I pointed out that the decisions made at the Imperial Conference on September 6 were rather 137. Ex. 1146, Tr. 10241, as Corrected by Language Section, Tr. 11139.
138. Ex. 1149, Tr. 10275.
139. Ex. 1151, Tr. 10281, as Corrected by Language Section Tr. 11141.

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careless and I urged the revision of the resolution of the Council in the Imperial presence. \* \* \*" October 17, 1941 140.

"In deciding the fundamental policy of our country you need not necessarily follow the decisions of the Council in the Imperial presence on the 6th of September, but should study carefully conditions both at home and abroad." October 20, 1941

"I told His Majesty that one mistaken step taken in the present cabinet change might have inadvertently plunged us into war. After careful consideration I believe this to be the only way of giving a new turn to the situation and had thus recommended it."

November 19, 1941 142.

"Accordingly, I advised His Majesty, when the Premier solicits His Majesty's final decision, if circumstances require, the Premier should be ordered to hold the Council in the Imperial Presence with the participation therein of all the Senior Statesmen."

140. Ex. 1154, Tr. 10291, as Corrected by Language Section, Tr. 11142.
141. Ex. 1156, Tr. 10295.
142. Ex. 1181, Tr. 10389, as Corrected by Language Section, Tr. 11143.

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November 26, 1941 143.

"Once the final decision is made this time it would truly be the last and irretrievably final one. Thus if there should be any doubt or any better idea to surmount the difficulties in Your Majesty's mind, I pray that Your Majesty be pleased to elucidate the same without the least reserve and take appropriate steps which Your Majesty might not repent of afterwards."

November 30, 1941

"I replied that His Majesty's decision is of such gravity that, once decided, it could not later be retracted. Hence it is felt that if there is the least uncertainty every possible precaution should be taken to do that to which His Majesty can give assent."

- 47. On the other hand, the prosecution has not pointed out one single diary entry where KIDO said "I urged war," or an equivalent statement.
- we must confess we are at a loss to understand what facts the prosecution claims establishes a conspiracy in so far as KIDO is concerned, when KIDO is supposed 143. Ex. 1190, Tr. 10429, as Corrected by Language Section, 11,143.

  144. Ex. 1198, Tr. 10468, as Corrected by Language Section, 12,480.

to have joined it, and what were its purposes. One of the prosecution's chief witnesses, Premier WAKATSUKI never heard of any plan or conspiracy by these accused or any one to plan and wage wars of aggression to conquer China and eventually the world.

By repetition of the words conspiracy, joined the conspiracy, conspirators, etc., the prosecution does not establish there was one, or that KIDO was a conspirator.

49. In abandoning the conspiracy charges against KIDO for the period of time from October 28, 1930 to June 13, 1936 it must be assumed that the prosecution has also abandoned all charges of substantive crimes during this period, as it has pursued the conspiracy method of proof and fails to point out any proof of substantive crimes against KIDO.

THE PRESIDENT: We will adjourn until halfpast one.

(Whereupon, at 1200, a recess was taken.)

145. Tr. 1591. 146. Par. JJ-2, Tr. 41047.

### AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, I will continue reading from page 47, Par. 50, Marquis KIDO: VI. EVENTS WHILE KIDO WAS CHIEF SECRETARY TO THE LORD KEEPER OF THE PRIVY SFAL: 1930 - June 13, 1936.

50. Briefly, from 1930 to June 13, 1936, KIDO, as Secretary to the Lord Keeper of the Privy Seal, gathered information for the Lord Keeper, so that he could be well informed if the Emperor asked for advice. KIDO was not permitted to hold audiences with the Emperor. His diary during this period records innumerable instances of his opposition to the military plotting and injecting itself into and

147. Tr. 31,400

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   gaining control of the government,
                                                                                                                                                                                                              his firm con-
 viction that the various branches of the government
 should be conducted in a constitutional manner,
                              Diary 6/23/31 - Aff. par. 10, Tr. 30,728

" 6/26/31 - Aff. par. 10, Tr. 30,728-9

" 7/11/31 - Ex. 179-A, Tr. 1925-6

" 7/13/31 - Ex. 179-B, Tr. 1926-7

" 8/7/31 - Ex. 179-F, Tr. 1927-8

" 8/12/31 - Ex. 179-G, Tr. 1930-1

" 9/9/31 - Ex. 179-C, Tr. 1936-7

" 9/12/31 - Ex. 179-H, Tr. 1936

" 9/19/31 - Ex. 179-H, Tr. 1937

" 9/21/31 - Ex. 179-H, Tr. 1937

" 9/22/31 - Ex. 179-J, Tr. 1939

" 10/1/31 - Ex. 179-J, Tr. 1940

" 10/5/31 - Ex. 179-M, Tr. 1941 and additional excerpt Aff. par. 16, Tr. 30,725

" 10/6/31 - Ex. 179-N, Tr. 1941 and additional excerpt Aff. par. 17, Tr. 30,736
 148.
                                                               10/6/31 - Ex. 179-N, Tr. 1941 and additional excerpt Aff. par. 17, Tr. 30,736

10/7/31 - Ex. 179-0, Tr. 1941 and additional excerpt Aff. par. 18, Tr. 30,737

10/12/31 - Aff. par. 18, Tr. 30,738

10/14/31 - Ex. 179-P, Tr. 1941-42

11/13/31 - Aff. par. 22, Tr. 30,742-3

11/17/31 - Aff. par. 22, Tr. 30,744-7

1/11/32 - Ex. 2191, Tr. 15,731, Aff. par. 24, Tr. 30,751-2

1/21/32 - Aff. par. 26, Tr. 30,754

2/16/32 - Aff. par. 31, Tr. 30,761-2

2/17/32 - Aff. par. 32, Tr. 30,762-4
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                                                             1/21/32 - Aff. par. 26, Tr. 30,754
2/16/32 - Aff. par. 31, Tr. 30,761-2
2/17/32 - Aff. par. 32, Tr. 30,762-4
5/16/32 - Aff. par. 39, Tr. 30,776-81
5/17/32 - Aff. par. 40, also Ex. 2252,
as Corrected by Lang. Sec., Tr. 16,215
2/26/36 - Aff. par. 56, Tr. 30,804-9
10/19/31 - Aff. par. 21, Tr. 30,740-1
10/28/31 - Aff. par. 21, Tr. 30,742
3/8/33 - Aff. par. 47, Tr. 30,794-6
3/24/33 - Aff. par. 48, Tr. 30,796-7
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                                           11
                               Diary,
149.
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his association with, and admiration for the policies

of Prince SAIONJI, the historical development of
the duties of the Lord Keeper during cabinet changes
and his opposition to Fascism. His subsequent
and continued adherence to these principles will
be dealt with hereinafter in more detail.

51. It was only two weeks after his assumption of the position of Chief Secretary to the Lord Keeper of the Privy Seal that Prime Minister HAMA153
GUCHI was assassinated. Thereafter followed a series of events, in which as shown by his diary,
KIDO had no part, except as a target of assassins

150. Diary 4/14/31 - Aff. par. 9, Tr. 30,725

" 12/16/31 - Aff. par. 23, Tr. 30,750-1

" 1/13/32 - Aff. par. 25, Tr. 30,753

" 2/26/32 - Aff. par. 33, Tr. 30,767-9

" 3/27/32 - Aff. par. 37, Tr. 30,774-5

" 4/8/32 - Aff. par. 38, Tr. 30,775-6

" 10/18/32 - Aff. par. 45, Tr. 30,791

" 8/9/34 - Aff. par. 51, Tr. 30,791

" 8/29/35 - Aff. par. 53, Tr. 30,801

" 7/4/36 - Aff. par. 62, Tr. 30,823

151. Diary 4/13/31 - Aff. par. 62, Tr. 30,724-5

" 4/14/31 - Aff. par. 9, Tr. 30,725-8

" 12/12/31 - Aff. par. 22, Tr. 30,748

" 2/12/32 - Aff. par. 22, Tr. 30,761

" 8/26/32 - Aff. par. 42, Tr. 30,789

" 9/16/32 - Aff. par. 44, Tr. 30,789

" 9/16/32 - Aff. par. 45, Tr. 30,790

" 12/15/32 - Aff. par. 46, Tr. 30,791-3

152. Diary 3/3/36 - Aff. par. 58, Tr. 30,818

153. Aff. par. 6, Tr. 30,722

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in some of them, but to all of which he expressed his opposition and used his best endeavors within the scope of his minor position either to prevent them. or strove to rectify the resultant effects on Japan's internal and external affairs: the March Incident in 1931 which served as the commencement of the Army's the Lanchurdriving power in the political field, ian Incident, October 17, 1931 Incident Sakurada Incident of January 13, 1932, the assassination of Dan and INOUE, leader of the Minseito the May 15, 1932 Incident Party in February 1932, in which the residence of the Lord Keeper of the Privy Seal was bombed and Prime Minister INUKAI the so-called god-sent troop affair in July 1933, the August 1935 Incident, the February 26, 1936 Incident in which SAITO, Lord Keeper of the Privy Seal, TAKAHASHI, Finance minister and others were assassinated.

19 52. Critical reference is made by the 20 prosecution to several events which occurred during 21 Aff. par. 7, Tr. 30,723, Diary 3/9/32, par. 36, Tr. 30,770-2 154. 22 Diary 10/17/31, Aff. par. 20, Tr. 30,739-40; Diary 3/9/32, Aff. par. 36, Tr. 30,772-3 Diary 1/13/31, Aff. par. 25, Tr. 30,753 Aff. par. 6, Pr. 30,722 Diary 5/16/31, Aff. par. 39, Tr. 30,776-81 Aff. par. 6, Tr. 30,722 Aff. par. 54, Tr. 30,801 Diary Feb./26, 27, 28, 29, 1936, Aff. par. 57, Tr. 30,806-16; Diary 3/2/36, Aff. par. 57, Tr. 30,817-8 155. 23 24 156. 157. 158. 159.

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this period. It refers to KIDO's Diary of September in which KIDO agreed in general with 10, 1931 TANI's opinion that self-defensive action in Manchuria might be unavoidable according to developments. As explained by KIDO, he believed the position of the Japanese people in Manchuria was becoming dangerous and he was afraid that they might be massacred as were the Japanese by the Bolshevik parties in 1920 at Nikolaevsk. The details of that incident were described by the accused MINAMI.

53. As abundantly shown in the evidence, when the wanchurian Incident started the official announcement was that the action was taken in selfdefense. KIDO believed at that time, and so testified on cross-examination, that the action initially It was not until about a was in self-defense. week later, however, when he heard rumors that the action had not been taken in self-defense and he consequently questioned HAYASHI of the War Department at Kasan Hall as shown in his diary entry of 165 These two statements are not September 23, 1931. irreconcilable as the prosecution would have the

Par. JJ-4, Tr. 41,048 Tr. 19,781

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Par. JJ-4, Tr. 41,048 Tr. 19,781

<sup>25</sup> 

Tr. 31,476 Ex. 179-J, Tr. 1939

Tribunal believe. One referred to his belief on September 18, 1931 and the other to his belief on September 23, 1931. KIDO's position at that time was very minor and he had nothing to do with policies or decisions as testified to by the accused SHIRATORI on cross-examination.

54. As shown in KIDO's Diary of September the Emperor had already approved the 22, 1931, government's policy to strive not to extend the Manchurian Incident and the Army was indignant because the Emperor's opinion had been induced by his personal attendants. It also shows that KIDO in the minor position as Chief Secretary to the Lord Keeper of the Privy Seal and some of his friends thought the Emperor had better not say anything further ". . . unless is necessitated to do so . and that Prince SAIONJI should not come to Tokyo ". . . unless there is an important change in the The prosecution fails to mention the conditional nature of the advice and argues that if the Emperor and Prince SAIONJI had taken a firm stand then it might have been decisive although 166.

Tr. 35,069 Ex. 179-I, Tr. 1938 as cor. by Lang. Sec. Tr. 1938 as cor. by Lang. Sec. Ex. 179-1,

Tr. 34,266-7

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trouble with the Army night have been provoked. The first part of this statement is speculation. latter part of the supposition is probably based on the prosecution's knowledge of what actually happened the next month on October 17, 1931. The prosecution also ignores the fact as reported in KIDO's diaries of October 7, 1931 and October 12, 1931, that KIDO did take part in having Prince SAIONJI return to Tokyo, when a change occurred and the situation Was it a crime for KIDO did become alarming. and his friends to express apprehensions at a social gathering, which thoughts were not conveyed to the KIDO had no responsibility to advise the Emperor at that time. Was it a crime for KIDO to have the safety of the Emperor and Prince SAIONJI in mind? The assassination of Prime Minister HAMA-GUCHI in November 1930 and the March 1931 Incident were fresh in their minds at that time. The October 17, 1931 Incident which occurred one month later justified their apprehensions. As KIDO testified on cross-examination, he was worried about a coup d'etat and the possibility of those close to the Throne being eliminated and replaced by activists. Should

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Par. JJ-(), Tr. 41,057 Aff. par. 18, Tr. 30,737-8 Aff. par. 15, Tr. 30,733

KIDO be condemned or praised because he worried about the possible machinations of the militarists? Anyone who has opposed militarists would understand why he was worried. Incidentally, when crossexamined on this excerpt of September 22, 1931, KIDO was unjustly accused by the prosecution of using a "weasel" word "thoroughly" which the prosecution said was not in his diary. Later when this diary entry was referred to the Language Section, it was found that the word "thoroughly" had been omitted by the prosecution in its translation. The excerpt was corrected but nothing further was said by the prosecution.

55. KIDO's evidence of the principal events which happened during this period were corroborated as follows:

SHIDEHARA - on the lack of control of the INUKAI - on the inability Cabinet over the Army. to withdraw the Army from Manchuria due to opposition The facts regarding the increased political influence of the military during this period of time, as set forth in Fah's book,

Tr. 31,298-9 Tr. 34,266-7 Tr. 1335 24

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2361-C, Tr. 18,116-122

"Government in Japan;" also, as set forth in the testimony of INOUE, Saburo. KATAKURA - that the Army in the manchurian Affair did not act in accordance with Cabinet decisions. Telegrams from the War minister dated September 19, 1931, confirming the Cabinet decision to avoid extension of the han-SHHDEHARA - with respect to churian Incident. rumors of possible happenings in Manchuria. events of the October Incident as related by MINAMI. The facts concerning the inability of UGAKI to form a cabinet in January, 1937 as testified to by the witness TSUGITA, and UGAKI. The facts regarding the February 26 Incident, as testified to by GOTO. The fact that Count MAKINO, Prince SAIONJI, and HARADA, the Elder Statesmen, and KIDO were worried about the unlawful novements of the militarists; their efforts for a sound development of parliamentary government, and the fact that KIDO and HARADA often put questions to SUZUKI and INOUE at dinner parties or tea ceremonies to obtain information regarding the military movements, as testified to by 185. Tr. 1639 Tr. 35,159-61 1
Tr. 19,088
Ex. 3421A, Tr. 32,826
Tr. 33,589-90
Tr. 19,790
Tr. 29,649-50
Tr. 1608, 1609, 1628 Tr. 32,826; Ex. 3422-I, Tr. 32,843-4 Tr. 1639

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"Government in Japan;" also, as set forth in the KATAKURA - that the testimony of INOUE, Saburo. Army in the manchurian Affair did not act in accordance with Cabinet decisions. Telegrams from the War Minister dated September 19, 1931, confirming the Cabinet decision to avoid extension of the han-SHHDEHARA - with respect to churian Incident. rumors of possible happenings in Manchuria. events of the October Incident as related by MINAMI. The facts concerning the inability of UGAKI to form a cabinet in January, 1937 as testified to by the witness TSUGITA, and UGAKI. The facts regarding the February 26 Incident, as testified to by GOTO. The fact that Count MAKINO, Prince SAIONJI, and HARADA, the Elder Statesmen, and KIDO were worried about the unlawful movements of the militarists; their efforts for a sound development of parliamentary government, and the fact that KIDO and HARADA often put questions to SUZUKI and INOUE at dinner parties or tea ceremonies to obtain information regarding the military movements, as testified to by 35,159-61 185. Tr. 1639 19,088 3421A, Tr. 32,826; Ex. 3422-I, Tr. 32,843-4 33,589-90 Tr. ,790 Tr. 1608, 1609, 1628

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VII

June 13, 1936 - October 22, 1937

56. During this period of time KIDO was President of the Bureau of Peerage. No events of special importance respecting KIDO have been presented, and no charge is mentioned in the prosecution's summation for this period of time.

#### VIII

EVENTS WHILE KIDO WAS MINISTER OF EDUCATION AND AFTER JANUARY 11, 1938 CONCURRENT WELFARE MINISTER OCTOBER 22, 1937 - MAY 26, 1938

57. We now pass on to consider the facts during the period KIDO was a Cabinet Minister, at the inception of which, October 22, 1937, the prosecution now claims after two years of trial, its case against him begins substantially, though the Indictment charges him with various crimes dating back almost ten years previous -- to wit, January 1, 1928. He was not a cabinet minister when the China Incident started on July 18, 1937, and, therefore, had no responsibility for the alleged

Tr. 35,159-161 Par. JJ-1, Tr. 41,047

planning, preparation or initiation thereof. The 188 prosecution has abandoned this Count against him.

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58. Under the Constitution of Japan. Article LV, it is stated: "The respective Ministers of State shall give their advice to the Emperor. and he responsible for it." At the neetings of the Cabinet discussions were held but generally speaking the details pertaining to any particular ministry were left to the competent minister of that ministry, and his explanations generally passed the Cabinet. It is only natural that when a minister of State presented a matter to the Cabinet, if the other Ministers had insufficient data or information to raise objections to the competent Minister's opinion they would not be in a position to offer objection. Thus policies submitted by the competent Minister were generally supported by the Cabinet, if the competent Minister explained it satisfactorily. Of course, administrative matters were handled by each minister without submission to the Cabinet. If Ministers of State are to be indicted as war criminals for formalistic responsibility for attending Cabinet meetings and casting a vote in support of

188. Par. JJ-89, Tr. 41,128 189. Ex. 68, Chapter IV, art. LV, Tr. 17,475 190. Tr. 31,385-31,386 measures discussed at the meeting, then may we ask why most of the Ministers of State during the time that KIDO was a Cabinet minister were not indicted? VIII (a)

Military Training Was Not Intensified While KIDO Was Education Minister.

59. KIDO was Minister of Education from October 22, 1937 to May 26, 1938. There is no competent evidence that as Minister of Education KIDO used his position to further militarism or aggression. KIDO's testimony that when he was the Education Minister he never promoted or encouraged military training in the schools was not challenged by the prosecution on cross-examination. broad and sweeping conclusions and opinions of Colonel Donald Ross Nugent, prosecution witness, with respect to teaching of aggressive militarism in the schools was shown on cross-examination to have been unwarranted. His testimony regarding the period of time KIDO was Minister of Education was sparse. He readily admitted that he could not He instituted an understand Japanese well. inquiry to the students through an interpreter.

Tr. 31,206 Tr. 842

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He was not an education specialist. He investigated the thoughts of only 300 or 350 of 18 million students who he said were subjected to military training. He inspected only 12 schools out of He admitted that the legal minimum for 40,000. military training as late as 1940 to 1941 was only from 12 hours to 3 hours and the rest was left to He could not even the discretion of each school. state the amount of time devoted to military training as distinguished from physical exercise in his own school. He admitted he was merely stating his own He also admitted that other influences opinion. outside of school could have inculcated ultra-Not even one textbook was produced nationalism. to back up his opinion. Colonel Nugent also admitted that in the United States from 1937 on, military training was offered in high schools, colleges, universities, junior colleges, preparatory schools and so forth, known as Army and Navy ROTC under reserve and retired officers of the United States Army; that such training in land grant colleges was compulsory. 199. Tr. 863 Tr. 863-864-865 Tr. 859

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60. It is clear from the testimony of prosecution witness Professor KAIGO, Tokiomi of Tokyo Imperial University that military training in schools in Japan was not started by KIDO but had been in force and effect in Japan since 1886.

KAIGO also testified that compulsory rifle drill was not initiated until 1939, which was after KIDO resigned from the Ministry of Education.

202. Tr. 881 203. Tr. 889

The prosecution refers to the testimony 61. of IKESHIMA. While it is true that he did testify on direct that in 1937 (he does not state whether before or after October 22nd) the school system was reorganized and more school time was devoted to military training and teaching of military subjects, 204 he admitted on cross-examination that at the time in question he was an employee of a broadcasting company; that his whole testimony on direct was hearsay and that he did not recall how much more time was devoted to military training when KIDO was Education Minister. 205 KIDO testified that the first statement above made by IKESHIMA on direct examination was not true. is corroborated by IWAMATSU who testified on direct examination that no new measures were issued or taken with respect to military education by KIDO whether at his own volition or not, and that the reorganization which was referred to by IKESHIMA took place some that is, long after KIDO resigned 208 time around 1941, from the Ministry of Education.

62. He also testified that IKESHIMA's testi-

204. T. 1,103 205, T. 1,103 206. T. 30,834

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208. T. 18,543

mony on direct examination to the effect that more time was devoted to military training and teaching of military subjects while KIDO was Education Minister, was incorrect. 209 On cross-examination by the prosecution, IWAMATSU denied that the question of compulsory attendance at the Youth School which came into effect in April, 1939 had been agreed upon while The Tribunal's Marquis KIDO was Education Minister. attention is called to the fact that while the prosecution witness IKESHIMA was an employee of a business concern and he admitted his testimony was hearsay, IWAMATSU was the Chief of the Section of Archives and Documents of the Ministry of Education during KIDO's tenure of office as Minister of Education.

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209. T. 18,577 210. T. 18,568-18,569

63. Prosecution witness OUCHI testified on direct examination that KIDO demanded the dismissal of Professor YANAIHARA from the faculty of the Imperial University of Tokyo and as a result he was requested by officials of the University to resign, which he did. But OUCHI, too, admitted on cross-examination that he was testifying from hearsay and that the reason for the dismissal of YANAIHARA was because of a certain essay which he published and in view of the delicacy of the situation he, OUCHI, and other friends of YANAIHARA advised YANAIHARA to resign, which he did voluntarily, 214 and there is no direct evidence that FIDO demanded YANAIHARA to resign. Why did the prosecution fail to call YANAIHARA?

On the other hand, TAKAGI, Yasaka, Professor of the Imperial University of Tokyo, who had also attended universities in the United States of America, testified before the Tribunal and he was not crossexamined by the prosecution. He stated that KIDO paid full respect to university autonomy and closely cooperated with Dr. NAGAYO, President of Tokyo Imperial

T. 945 T. 954 T. 952 211.

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216 He corroborated KIDO's testimony University. that KIDO had common ideas with the university authorities about university autonomy and that KIDO never tried to antagonize or bring any pressure whatsoever to bear upon the university. In dealing with the question of Professor YANAIHARA, KIDO told him he would not interfere, leaving the solution of the problem to the university authorities. TAKEGI was one of the councillors of the university at that time and he stated that he knew that Marquis KIDO did not interfere nor exert any pressure whatsoever in connection with Professor YANAIHARA's resigna-He also stated that he had frequent talks with KIDO and knew of no tendencies of KIDO toward totalitarianism or fascism.

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of the university and restect for university autonomy is also shown in his diary entries of October 29, 1937; 221

November 9, 1937, and November 30, 1937. The testimony of TAKIKAWA is innocuous. 222

The rest of the general summation of the prosecution, incorporated in KIDO's individual summation by footnote reference applies to a period of time after KIDO had resigned as

216. T. 31,642 . 220. T. 31,641 69, T.30,828; 217. T. 31,642 221. Aff. par. 74, T.30,833 Aff. par. 74, T.30,833 219. T. 31,642 222. Ex. 131, T. 992

223 as Minister of Education.

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64a. There is no ground for suspicion that a compulsory attendance at the Youth School was for preparation for war. As testified to by YOSFIDA. the Youth Training School was renamed the Youth School and compulsory courses did not become effective until April 1939, when the Imperial Ordinance was issued to that effect. 225 This was after KIDO had resigned as Education Minister. YOSHIDA also testified that the school military training at first belonged to the gymnastics course but was created independently of gymnastics in 1939, which, too, was after KIDO had resigned as Minister of Education. And he also testified that in so far as universities were concerned, military training was an optional course up to 1939 and, while it was optional, most students were indifferent to such training. 227 This, too, was after KIDO had resigned as Minister of Education on May 26, 1938. The opinions of OUCHI with respect to teaching in schools of ultra-nationalism and prevaration for aggression was dispelled by YOSHIDA's explanation of

223. Par. F.80, T. 39,426-39,427
224. T. 18,451
225. T. 18,471-18,472-18,473-18,474-18,475-18,476
226. T. 18,457
227. T. 18,461

1 the facts showing no such opinion of OUCHI was justifiable. 228

65. In June, 1937 the first KONOYE Cabinet was formed. When Prince KONOYE became Prime Minister in June, 1937 he set up an Educational Council to revamp the education system. Later, while KIDO was Education Minister in November, 1937, in order to prevent the militarists from becoming members of this council he sought and obtained the services of nonmilitary men to serve on this council as President and Hembers of it. 228a. This was the highest instrument for the renovation of the education system and it comprised as councillors the most prominent persons of learning and experience both in and out of office. 229

66. On direct examination by the prosecution the witness KAIGO testified that the subjects discussed in the Educational Council commencing December, 1937 were deliberated for several years and after December, 1937 the education in Japan was devoted to the promo-Nothing has been offered by tion of patriotism. 230 the prosecution which even remotely shows that the Council was set up for militaristic education.

228a. Aff. par.73, Diarv, Nov.27,1937, T.30,832-3 229. T. 28,206 230. T. 894

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67. As pointed out by the prosecution, the cabinet decision of January 21, 1938 232 ". . . it is expected that education will be reformed in order to cultivate the character of the people of a great nation." 233 This is commendable, not criminal. It is submitted that there is nothing in those quoted remarks which conflicts with KIDO's testimony. It certainly cannot be argued that that part of the cabinet decision pointed to militarism, as the prosecution would have this Tribunal believe. KIDO's statement in answer to Baron OKURA's interpellation confirms the wholesomeness of KIDO's purpose of education. 235 The prosecution did not produce or refer in its summation to one order, one directive, one ordinance regarding militarism in the schools issued by KIDO as Minister of Education, to substantiate its position, nor was there any evidence to explain their absence, if they had been issued.

68. The prosecution argues that KIDO knew of the Nanking atrocities and therefore his credit as a witness is destroyed, as he had denied knowledge of

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Par. JJ-46, Tr. 41,085 Ex. 3270, T. 37,251

Par. JJ-46, T. 41,085 Ex. 3737-A, T. 37,285-37,292

these atrocities in his effidavit. The prosecution makes light of HARADA's recollection of an illness he had and which he reported to Dr. SASSA had occurred two or three years previously, but condemns KIDO for alleged failure to recall one event of eleven years ago, which had occurred during a kaleidoscopic period of Japan's history. When confronted with a newspaper report of an interpellation of him by Baron OKURA at a budget meeting, and his recollection was refreshed, KIDO readily admitted the occasion, but stated his recollection was that he had talked on the sense of superiority of the Japanese nationals in China.

the actual proceedings of the budget meeting which showed that OKURA mentioned reports in foreign newspapers about distasteful things written about the actions of Japanese forces in the Shanghai-Nanking area. He also discoursed at length upon the attitude found abroad of the sense of superiority exhibited by the Japanese nationals toward the Chinese, and this was the focus of his criticism.

70. KIDO acknowledged, in reply to OKURA,

237. T. 38,684

238. Ex. 3342-A, T. 31,515

239. T. 31,516

240. Ex. 3737-A, T. 37,285-37,292

that he had heard of reports concerning the action 2 of the Japanese troops in Shanghai and also heard of reports of the sense of superiority of the Japanese nationals in China and Manchuria. It is quite clear from what KIDO said that the reports he heard were not about Nanking. He also replied to Baron OKURA that work in the elementary schools to correct this sense of superiority had already been started and that further remedial measures would be carried out. Does this sound like a militarist? Since the prosecution's evidence shows KIDO was endeavoring to correct the sense of superiority in the school children's minds, how can it fairly charge that he fostered ultra-nationalism and aggression?

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1 had seen reports in foreign newspapers about name to is unsupported by the evidence. There is also no evidence that KIDO saw or heard of reports alleged to have been made to HIROTA about Nanking. If KIDO had known of the atrocities of Nanking he naturally would have mentioned it in his reply to OKULL. The mere fact HIROTA saw them is no evidence KILO did. The production by the prosecution of the actual proceedings of 500 the budget meeting verified KIDO's previous statement on cross-examination that his recollection was that he had talked on the sense of superiority of the Japan-10 11 Baron OKURA.'s interpellation referred to this topic ese nationals in China. 12 and not to specific cases of "brutalities" or "atroci-13 ties" in Nanking is apparent from his questions and 14 also from the fact that he directed his questions to 15 the Minister of Education and not the military. The 16 prosecution's unsupported assertion that KIDO as a 17 cabinet member is responsible for the Nanking atrocities 18 19 is contrary to the evidence that it was the responsibility of the military, and contrary to the prosecution's 20 21 own claims in other parts of its summation that it was 22 23 the responsibility of the military. 24 Per. JJ-34, T. 41,074 25

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"statement of policy" and the Tokyo Gazette is not the
"press." Moreover, the prosecution when it put the
22 "press." Moreover, the prosecution when it put the
23 question to IWAMATSU said, "I will leave cut the Tokyo
24 245. T. 28,401, 28,402, 28,403, 28,404, 28,405, 28,406,
28,407
25 246. T. 33,878, 33,879, 33,880
247. Ex. 3337, T. 30,658
248. Par. JJ-47, T. 41,086; Ex. 226, T. 3,543
249. T. 18,581

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The prosecution's contention that he had seen reports in foreign newspapers about Nanking is unsupported by the evidence. There is also no evidence that KIDO saw or heard of reports alleged to have been made to HIKOTA about Nanking. If KIDO had known of the atrocities of Nanking he naturally would have mentioned it in his reply to OKUNA. The mere fact HIROTA saw them is no evidence KIDO did. The production by the prosecution of the actual proceedings of the budget meeting verified KIDO's previous statement on cross-examination that his recollection was that he had talked on the sense of superiority of the Japanese nationals in China. That the principal point of Baron OKURA's interpellation referred to this topic and not to specific cases of "brutalities" or "atrocities" in Nanking is apparent from his questions and also from the fact that he directed his questions to the Minister of Education and not the military. The prosecution's unsupported assertion that KIDO as a cabinet member is responsible for the Nanking atrocities is contrary to the evidence that it was the responsibility of the military, and contrary to the prosecution's own claims in other parts of its summation that it was the responsibility of the military.

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> 241. Par. JJ-34, T. 41,074 242. T. 31,516

Office, testified on cross-examination on October 3, 1947 that there was nothing about the atrocities in Nanking in the Japanese newspapers; that he never heard that HIROTA ever presented this question to the Cabinet and that he, ISHII, did not regard the Cabinet as a body to discuss such a question; that the Cabinet was not in any position to deal with questions which concerned the military in the field and that he never heard that this matter was submitted to the Cabinet. On redirect examination he stated that the matter was called to the attention of the liaison conferences and warnings were issued to the military and that the Foreign Office could do nothing more than it did from 243 the standpoint of the authority in its possession.

73. Minister of Justice ShIONO, Suehiko, testified that during the First KONOYE Cabinet, Cabinet
Ministers were not informed at the cabinet meetings
about the acts of atrocities which were committed in
China. He did not know whether there were any protests
from foreign countries but if there were, such protests
tests were never brought to the attention of the Cabinet.
He was not cross-examined by the prosecution. The
243. T. 29,989, 29,990, 29,992, 29,993, 29,995, 29,997
244. T. 30,358

testimony of ARAKI, MATSUI, and KAYA were all to the same effect.

### VIII (b)

## "The Japanese Spirit"

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74. In support of its contention that KIDO sympathized with and participated in Japanese aggression in China the prosecution refers to an article called "The Japanese Spirit" which appeared in the Tokyo Gazette of March-April 1938. The prosecution only read into the record a part of this article. It also contends that the defense witness IWAMATSU stated 12 that generally speaking no statement would be issued 13 by the Department of Education without the knowledge 14 of the Minister of Education. IW. MaTSU answered this when he was quizzed by the prosecution on a hypothetical question - if it is possible that an important statement of policy could be issued to the press by the Ministry 18 of Education without the knowledge and approval of the 19 The article in question is not a finister himself. statement of policy" and the Tokyo Gazette is not the press." Moreover, the prosecution when it put the 23 question to IWAMATSU said, "I will leave out the Tokyo 24245. T. 28,401, 28,402, 28,403, 28,404, 28,405, 28,406, T. 33,878, 33,879, 33,880 Ex. 3337, T. 30,658 Par. JJ-47, T. 41,086; Ex. 226, T. 3,543 T. 18,581 25 246.

Gazette." And it substituted the word "press." It is clear that IWAMATSU was not purporting to say anything about the Tokyo Gazette when he answered this question. Nor did the prosecution present that particular publication of the Tokyo Gazette containing the article, "The Japanese Spirit" to IWAMATSU and ask him the direct question whether or not it was issued by KILO. The prosecution preferred to drop the question since the witness said he did not know what the Tokyo Gazette was and the prosecution observed, "It is probably not worth pursuing it with regard to the particular statement." Furthermore, IWAMATSU answered the prosecution that it was part of his duties to issue statements to the press and he explained the matter in detail.

75. The evidence is that the Tokyo Gazette was published by the Japanese Foreign Affairs Association, that the material in the magazine was selected from "Shuho" (The Weekly Report) edited by the Board of Information and that it was this Board under direct control of the Prime Minister and not the Education Ministry that supervised publication of the Tokyo Gazette KIDO fully explained the method of publicain 1938. tions and stated that he never wrote, edited, published

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T. 18,582 T. 18,579, 18,580 Ex. 448, T. 5,103 5,103 (certificate not read by Pros.) 5,103. See also Aff. per. 90, T.30,843

or approved the printing of the article which appeared 254 in the "Shuho." Although KIDO had nothing to do with the article, on direct examination he offered to submit the "Shuho" of February 9, 1938 wherein the article appeared but the prosecution did not accept his offer nor did it cross-examine him on this entire matter.

76. The Tokyo Gazette did not reproduce the following statement which appeared originally in the "Shuho."

"The Empire's action in the present affair
(The China Affair) does not contemplate any
aggression or conquest as enunciated from time
to time with regard to its significance and object."

The part of the article which was read by the prosecution was a mere introductory remark. It was not a declaration of national policy but a general historical statement. KIDO endeavored to find out who wrote the article without success.

77. Approval of contributions to the "Shuho" 257 was given by the Vice Minister of Education. From the foregoing it is quite apparent that KIDO was not consulted in advance about the article nor did he approve

257. Ibid.

<sup>254:</sup> Aff.par. 91, T. 30,844

<sup>25 255.</sup> Ibid.

<sup>256.</sup> Aff. par. 91, T. 30,844

of it nor was any report submitted to him after the publication. The prosecution offered no other articles issued from any departments controlled by KIDO and as the President of the Tribunal observed: "From such a number of articles a hostile inference might be drawn, 258 but, perhaps, not from one article."

## VIII. (c)

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# Peace with Chiang Kai-shek

78. The evidence is undisputed as testified to by Mr. KISHI, Secretary to Prince KONOYE, that on the night of December 16, 1937 he brought KIDO a message from KONOYE stating that since KONOYE could not grasp the Army's real intention, KONOYE wanted KIDO to find out from the War Minister at the next cabinet meet-He was not cross-examined. The next day, Deceming. ber 17, 1937, at the cabinet meeting KIDO observed that as it is a bilateral negotiation it may become necessary to make further concessions according to China's counterproposals. He then asked SUGIYAMA if the Army was prepared for it and SUGIYAMA said, "No. These are the minimum terms. In case they are rejected by onina, there will be no alternative but to keep up military action against her." This is corroborated by the T. 3,550 T. 31,639; see also Aff. par. 79, T. 30,836 Aff. par. 79, T. 30,836 258.

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  witness KISHI.
                   It was fully explained by KIDO on
                        War Minister SUGIYAMA's explana-
  cross-examination.
  tions were not clear and the wishes of the High Com-
  mand were known to the cabinet only through him.
  he could not find out from SUGIYAMA the Army's real
  attitude toward the China Incident.
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               The prosecution in its general summation
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  cites KIDO's affidavit as authority for the proposition
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  that according to KIDO the army was most anxious to
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  press the peace solution, and that KIDO was the one
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  who led the battle to keep the terms more abstract and
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  that "the army thought the chance of failure so great
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  that, according to KIDO, it had firmly determined to
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  bring about peace at any cost." KIDO did not say that.
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  KIDO said in his affidavit that after he had spoken with
  War Minister SUGIYAMA "I failed to fully understand,
  therefore, that the Army had made a firm determination
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   to bring about peace at all cost." Furthermore, KIDO
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   did not lead the battle to keep the terms abstract.
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   The cabinet decision was that they would leave the mat-
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   ter to the Foreign Office and let the Ambassador sound
   out Chiang's views by showing comprehensive condition
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                              266. T. 30,836, 30,837
267. T. 30,836
   261.
         T. 31,638-639
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   262.
         T. 31,426, 31,430
            31,421
   263.
         Par. E-54, T. 39,263
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of intentions of Japan and refrain from showing details as far as possible. Furthermore, as shown in KIDO's Diary, December 21, 1937, the German Ambassador requested further instructions which were given him.

80. On January 16, 1938 Prime Minister KONOYE issued the statement of the Imperial Government. KIDO stated in his affidavit that although there was no evidence before the Tribunal that he knew of that he had signed this statement, he voluntarily stated that the fact was that he did sign it. It speaks for itself. We ask the Tribunal to read it in full.

81. At that time it was ascertained that Chiang Kai-shek had no bona fides in restoring peace with Japan, and the Japanese Government thought that a short cut for settlement of the China Affair was to take constructive measures in China in conjunction with those Chinese who shared Japan's ideals rather than overrun the vast territory of China with armed forces and the government decided not to deal with the Chiang 272 Regime.

The Cabinet's decision not to deal with 82. the Chiang Kai-shek Regime was made on the basis of a

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Ibid.

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T. 30,837, Diary, Dec. 18, 1937 T. 30,837; Ex. 2259, T. 16,222 Ex. 972-A, T. 9,505 Aff. par. 86, T. 30,840 268.

report drafted by the Foreign Office, and at the cabinet meeting Foreign Minister HIkOTA told his cabinet colleagues that he had arrived at the conclusion that no bona fides could be discerned judging by the reply from Chiang Kai-shek which was of such a dilatory nature at that late stage, since it sought an elucidation on the meaning of Japan's proposal.

83. The facts for many months preceding the decision by the Cabinet which adopted the advice of the Foreign Minister are fully explained in the summation of the accused Foreign Minister HILOTA which we need not repeat but adopt as part of this summation. KIDO held the minor post of Education Minister at this time, and believed what was told him by the Foreign Minister on the diplomatic matters and followed his advice. The many steps enumerated by the accused HIROTA taken to effect this peace within his duties as Foreign Minister definitely demonstrate that KIDO's part was very minor and any contention to the contrary would be a gross exaggeration. KIDO was asked on cross-examination if he would not admit that it was perfectly obvious that if the intentions of the KONOYE Cabinet were carried out the terms would be so general and lacking in specific Aff. par. 84, T. 30,838; Ex. 2260, Diary Jan. 14, 1938, as cor. by Lang. Sec. T. 16,223 273.

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details that it would be quite natural that Japan would get an inquiry back from Chiang Kai-shek requesting more details. KIDO replied that would be but natural. He was then asked whether he had asked the Foreign Minister on what ground he had based his conclusion that no bona fides were being shown by Chiang Kai-shek. KIDO replied that he did not recall whether or not he did question the 274

Foreign Minister. There was no necessity for KIDO to ask the Foreign Minister because prior to the decision mentioned, the Cabinet had received a report from Foreign Minister hILOTA on the details of the peace negotiations with China. With respect to the four fundamentals of peace, HORINOUCHI, ex-Vice Minister for Foreign Affairs, testified:

"As to the contents of the four fundamental terms, however, a detailed explanation had already been given through the German Government. It was quite incomprehensible to us that the Chinese Government should make a request to know the contents of the terms to further details. In the light of the progress of the past negotiations between the two governments since the outbreak of the incident, the Japanese Government

274. T. 31,462, 31,464 275. Aff. per. 84, T. 30,838

could not but regard it as an artifice to delay the settlement on purpose. The Foreign Office was greatly discouraged by this reply of the 276 Chinese Government."

On cross-examination HOKINOUCHI testified that he recollected that the Foreign Minister HIkOTA gave quite detailed explanation in regard to those four terms. In the light of the above it is apparent that the full explanation had been given and that there was no necessity for KIDO to ask the Foreign Minister for the ground of his conclusion. The statement of January 16, 1938 does not in any manner indicate that Japan desired to conquer China by armed force. On the contrary it indicates that Japan was eager for an over-all peace between Japan and China and fervently hoped that great efforts would be put forth toward the accomplishment of this. Witness KAGESA testified that the National Government once was about to accept the terms of the Japanese Government but on the 14th of January 1938 it suddenly sent an answer contrary to the expectation of the Japanese Government, and upon receipt of the reply of the Chinese Government the Japanese Government drew the conclusion that the Chinese Government had no

276. T. 29,703, 29,704 277. T. 29,831, 29,832 278. Ex. 972-A, T. 9,505

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sincerity in the peace negotiations between the two
    countries which led to the announcement of January 16, 1938.
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   279. T. 23,977, 23,978
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KIDO states in his affidavit was at a loss to understand on what basis the prosecution in its cross-exemination of KAWABE, Torashiro could ask him if General TADA told him that KIDO vigorously opposed neace with China when it was proposed to the Cabinet meeting of December 21, 1937. The question naturally arises why didn't the prosecution introduce TADA's testimony either on its case or in rebuttal that he heard KIDO say this, instead of relying on hearsay? It called him as a witness on KAWABE also testified that he reanother matter. called that TADA went to the Liaison Conference and told KAWABE afterwards that he had expressed his own opinions quite a bit. If HARADA's Diary is to be believed it shows that a liaison conference was held on January 15, 1938 from 9:30 a.m. to 8:00 p.m., at which conference the General Staff of the Army laid great stress on the necessity of making preparations against the Soviet and for that purpose peace should be made with China. SUYETSUGU entered into a heated argument Also HORINOUCHI testified at that conference. that HIROTA never told him that the Cabinet, at the instance of KIDO, had refused the General Steff's

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<sup>(280.</sup> Aff. par. 85, Tr. 30,840 281. Tr. 22,048

<sup>283.</sup> Ex. 3789-A, Tr. 37,722 284. Tr. 29,702)

proposal that lenient and detailed terms should be
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presented to China. Under the Japanese Constitution no person other than Cabinet Ministers can attend cabinet meetings and participate in its decisions.

It is quite unbelievable that TADA attended any cabinet meeting and discussed the China Affair. There is no evidence that he did. Again on the other hand, KIDO was never a member of the liaison conference and he never had an opportunity to say anything to TADA in that conference.

of December 21, 1937, introduced by the prosecution on rebuttal, KIDO is supposed to have told HARADA that he suspected that the Army General Staff was working fairly concretely through the German attache in Tokyo committing to them some definite terms of peace and that he felt a great danger in the sudden haste with which the Army General Staff were turning for a peaceful settlement and that he could not but feel suspicious at the General Staff showing such a degree of eagerness for the negotiations and that he army Germany.

24 86. When HARADA submitted to Prince SAIONJI
25 the reports of the German mediation, Prince SAIONJI,
(285. Tr. 29.806)

285. Tr. 29,806 286. Ex. 3788-A, Tr. 37,709)

too, was suspicious of the underlying motive of Germany and asked "Is this 'German mediation' to be carried on by the German Government or by some German individuals?" He, too, was greatly concerned about the reasons for and the manner of hurrying through these peace negotiations. From the foregoing it is quite apparent that it is not true that KIDO vigorously opposed peace with China when it was supposed to have been proposed by TADA to the cabinet but if the entries of HARADA's memoirs are accurate, the evidence is both Frince SAIONJI and KIDO were worrying about the conspiracy of the Army General Staff and the German Government in which Japan might be fooled by Germany. Furthermore, it is quite apparent from all the evidence that KIDO, as Minister of Edu-16 cation, played a very minor part in these peace negoti-17 ations which were within the competence of and being handled by the Foreign Minister upon whose judgment 19 KIDO relied. 20 that when KIDO The evidence shows 21 was asked by Prince KONCYE to join his cabinet he 22 declined at first. He did not desire to join the 23 cabinet as he felt dissatisfied with the continuance

(287. Ex. 3881, Tr. 38,692 288. Aff. per. 65, Tr. 30,825) of hostilities with China. Prince KONOYE, however,
insisted that he should join it to assist him in
terminating the China Affair and KIDO was moved by
KONOYE's importunate request and accepted the offer.
The evidence is also undisputed that the Emperor,
desiring peace with China, approved of KIDO's resignation as President of the Board of Peerage to join the
KONOYE Cabinet, and he thought that KIDO was a man
needed in the Government.

mitted that he was in close touch with KONOYE and had been advising him before he joined the cabinet and therefore must have known of the cabinet policies.

For more than a year prior to joining the KONOYE Cabinet, KIDO was only President of the Bureau of Peerage. There is no evidence indicating that KIDO knew of the cabinet decisions before he joined the cabinet. As a matter of fact the only evidence is that KIDO testified that Prince KONOYE "\* \* \*used to seek my views from time to time, but aside from 291 this I had no direct connection with politics."

He had counselled KONOYE only with respect to the policy (289. Diery Oct. 21, 1937, Aff. par. 66

Tr. 30,826 - 30,827

290. Par. JJ-26, Tr. 41,066

291. Aff. par. 63, Tr. 30,824)

of pursuing localization and non-expansion of the He was not cross-examined on this. China Incident.

89. The prosecution also failed to crossexamine KIDO on his statement that the policy of the cabinet in regard to the answer to the council in connection with the Nine Power Pact had been decided by the cabinet prior to KIDO's entry into the cabinet, and that the decision at the Extraordinary Sessionon October 27, 1937, five days after KIDO joined the cabinet, was a matter of form. There is no evidence to the contrary.

90. KIDO's statement that the heavy industries project in Manchuria was decided before he joined the cabinet is also unchallenged and if the prosecution had any evidence to show the contrary it should have The prosecution had produced it in rebuttal. listed this in its summary as having been passed after and it was for this KIDO had joined the cabinet, reason that KIDO was "careful to allege" it was approved before he joined the cabinet. To say that KIDO must have known of it is the prosecution's usual guess.

that KIDO's 91. The prosecution infers

(292. Aff. par. 64, Tr. 30,825 293. Aff. par. 68, Tr. 30,827 294. Aff. par 67, Tr. 30,827 295. Pros. Doc. 0001, P. 55 296. Par. JJ-26, Tr. 41,067)

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conversation with SUGIYAMA on November 3, 1937 was for the purpose of issuing a declaration of war instead of settlement of the China Affair. The uncontradicted and unchallenged testimony is that KIDO had a talk with Minister of War SUGIYAMA at Prince The purpose of the talk was to KONOYE's request. bring about a better understanding between these two and ascertain the War Minister's real intentions regarding the settlement of the China Affair and convey this information to Prince KONOYE. borne out by KIDO's subsequent diary entries of and the testimony of KIDO November 19, 1937 The use of the words "declaration of and KISHI. war" which appears in KIDO's Diary of November 3, 1937 is emphasized by the prosecution but it overlooks the fact that they were discussing "saving the situation."

92. The construction placed by the prosecution on KIDO's Diary entries of November 15th and 305 November 16, 1937 is not in accordance with facts. The prosecution on its case did not introduce KIDO's diary entry of November 15, 1937 in evidence. It was (297. Aff. par. 70, Tr. 30,828.
298. Aff. par. 70, Tr. 30,829
299. Ex. 2258 as cor. by Lang. Sec. Tr. 16,221
300. Aff. par. 79 & 80, Tr. 30,835 & 30,836
301. Tr. 31,638 - 31,639 (303. Aff. par. 70,
302. Ex. 2256, Tr. 16219 Tr. 30,829
304. Ex. 2257; as cor. by Lang. Sec. Tr. 16,220
305. Par. JJ-27, Tr. 41,067)

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admitted into evidence in KIDO's affidavit. From both of these entries it is crystal clear that KONOYE intended to resign as "he had little expected the situation would make such serious developments."

KIDO who has joined his cabinet to assist him in effecting peace with China stated in his diary that he was surprised to hear of KONOYE's intentions so suddenly and that "in view of the serious effects it might have urged him to reconsider the question of resignation; but he would not change his mind."

93. His diary of the next day shows that KIDO objected to KONOYE's resignation because if the KONOYE Cabinet resigned en bloc the foreign exchange rate would collapse and would adversely effect putting and end to the China Incident. The prosecution charge that KIDO's statement that his reason for objecting to KONOYE's intent to resign was because of its probable repercussions on the fortunes of war is not borne out by this entry. It definitely establishes the reason to be because of apprehension of the development of facts complicating the solution of the China Incident. This diary entry in no way contradicts the statement made by KIDO in his affidavit.

(306. Ex. 2257, as cor. by Lang. Sec. Tr. 16,220 307. Aff. Par. 70, 71, Tr. 30,829-30,831)

The reference by KIDO to the offensive operation referred to immediate military operation in the field at that time.

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94. On November 18, 1937 the General Staff amended Imperial General Headquarters Regulations to include the establishment of Imperial Headquarters by adding the words "in case of incidents" to the existing limitation of "in wartime." The undisputed evidence is that KIDO had nothing to do with this It was a General Staff matter. revision.

95. KIDO made an inquiry of the War Minister at the cabinet meeting of November 19, 1937 warned him against abusing the regulations. 14 assertion by the prosecution that KIDO's affidavit misrepresented the diary entry in saying that there 16 is no record of KIDO warning "ar Minister SUGIYAMA 17 is in part excusable because of the lack of understand-18 The ing by the Western mind of the Japanese. 19 question involved the meaning of the word "incident" 20 which in Japanese, used in the new regulations, is 21 very vague and can be construed either widely or narrowly. KIDO's intention was to prevent the Army 23

(308. Aff. Per. 71, Tr. 30,831 309. Aff. per. 72, Tr. 30,832 24 25

310. Ex. 2258 as cor by Lang. Sec. Tr. 16,221 311. Aff. par. 72, Tr. 30,832 312. Par. JJ-28, Tr. 41,067)

frommaking a wide arbitrary interpretation of the term "incident" when he put the question as to the meaning of an "incident" to SUGIYAMA. When he answered, SUGIYAMA could not be so impudent as to say that the China Affair was included in the term "incident" as a matter of course. Typically Japanese, the warning was implied in questioning the meaning of the term. Furthermore, an explanation of the War Minister's 313 reply definitely establishes that SUGIYAMA accepted KIDO's inquiry as a warning.

96. The prosecution claims that KIDO in his affidavit omitted reference to the cabinet decisions of December 24, 1937 and those of January 9th and 10th, 1938, in the hope that they had not been discovered, because the prosecution had not offered them 314 as part of its case. Why did the prosecution wait until HIROTA's defense to offer these documents? Why did it not cross-examine KIDO on the latter two? In any event in no imaginable way do they conflict with KIDO's testimony.

97. The exhibits the prosecution cites are as follows: Exhibit 3265 is the Foreign Office record concerning the basic policy for settling the China

(313. Ex. 2258 as cor by Lang Sec. Tr. 16,221 314. Par. JJ-30, Tr. 41,069; Par JJ-31, Tr. 41,070; Par. JJ-10, Tr. 41,053)

Incident. The Foreign, Navy and /rmy Ministers discussed the policy on January 10, 1938 and they decided that the matter should be discussed at the Imperial Conference as proposed by the General Staff. KIDO did not attend this Three Minister's conference. The policy was discussed at the Imperial Conference on the following day and this decision was announced by the cabinet on January 16, 1938. KIDO fully explained the cabinet statement of January 16, 1938, in his affidavit. There was no need of referring to the discussion (it was not a decision), because KIDO did nor attend the meeting.

(315, Tr. 29,855 316. Aff. Par. 86, Tr. 30,840)

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98. Exhibit 3264 is the record or the Imperial Household Ministry concerning the Imperial Conference held on January 11, 1938. KIDO did not attend this either. Here too the decision made by the Imperial Conference was later announced by the cabinet on January 16, 1938, to which KIDO fully referred in The fact that KIDO voluntarily his affidavit. informed the Tribunal that he signed KONOYE's statement although there was no evidence in the prosecution's case that he did, shows a desire to reveal facts, not conceal them as the prosecution claims. "e also wish to point out that KIDO was not the Lord Keeper on January 11, 1938, so that KONOYE's statement to and action of the Lord Keeper then is not relevant to KIDO's case.

99. Exhibit 3263 is the cabinet decision of the outline of measures of the China Incident made on December 24, 1937. It is idle to infer that KIDO tried to hide from his participation in the cabinet meeting of December 24, 1937. The prosecution had KIDO's Diary since December 1945 and must

317. Aff. par. 86, T. 30840-30841. 318. Par. JJ-14, T. 41058.

320. Ex. 3263, T. 29815.

Duda & Spratt

January 16, 1938, to which KIDO fully referred in his affidavit.

The fact that KIDO voluntarily informed the Tribunal that he signed KONOYE's statement although there was no evidence in the prosecution's case that he did, shows a desire to reveal

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319. T. 29815. 320. Ex. 3263, T. 29815.

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know from the diary entry of December 24, 1937, that he attended the cabinet meeting on that day. If the prosecution attached any importance to it that entry could have been offered in evidence by the prosecution.

21, 1937 KIDO maintained that policies for cultural movements towards China should be established. The diary entry confirms this and it also states that they deliberated on "counter measures for the China Affair." 321.

The prosecution maintains that KIDO omitted all reference to these words in his affidavit. On the contrary these words are explained in his affidavit when he pointed out that "policies for cultural movement toward China should be established instead of carrying out military activities to no purpose." As testified to by KIDO the words just quoted were used to explain what was in his diary.

approved the National Mobilization Law. This law was drafted by the Planning Board. Prince KONOYE spoke before the Diet on the introduction of this bill on March 17, 1938. Previously, on February

321. Par. JJ-28, T. 41067. 322. Aff. par. 82, T. 30837. 323. Ex. 2794, T. 25069-25071.

24, 1938, Mr. SAITO told the Diet of the necessity 324. for the adoption of this bill. At that time there was in existence the Munitions Industry Mobilization Law of 1918 which was not adequate in its scope and because of the China Incident the bill was offered to supplement the deficiencies of that law. It was approved by the Diet but prior to its passage at a cabinet meeting, KIDO registered opposition because too much could be done by way of Imperial ordinances. As finally approved it provided that a general mobilization deliberation council would be created in the Diet with many members representing the Diet, permitting them to participate in the deliberations in 327. The effect of this deliberconnection with the law. ation council which KIDO favored was well expressed in a report of the United States Department of State as follows:

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"However, the decision to set up a National Mobilization Council of fifty members (largely from the two Houses of the Diet) to review the measures applied under this statute tended to nullify its effectiveness as a weapon of the military 24 in the struggle for nationalized industries." 328.

B24. Ex. 2792-C, T. 25061, 25063. B25. T. 25068, 25071. B26. T. 31512, 31513.

Actually, it will be noted that the National Mobilization Bill was passed in May 1938, ten months after the China Incident had commenced, and was drafted on the basis of national mobilization laws of other coun-329. KIDO was not a competent minister directly tries. in charge of this legislation. By merely citing, and failing in its individual KIDO summation to comment on, other bills which were passed while KIDO was a Cabinet Minister, it may be assumed that the prosecution does not attach much importance to them in so far as KIDO is concerned. These laws were in the main under the competency of ministers other than KIDO and as the laws show, they were signed by the Prime Minister and competent ministers in charge pursuant to KOSHIKIREI. In any event, the prosecution's interpretation of these bills depended on the opinions and conclusions of Liebert which the Tribunal has been requested to disregard. The purpose of all these bills have been fully explained in the general economic summation. To say that bills passed in 1938 were pursuant to a plan which was not adopted until January 1939 is beyond comprehension. As the Department of State of the United States reported: 329. Ex. 2802, T. 25210, 25215.

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"On the whole, even in 1940-41, Japan's economy was financed and operated by private enterprise, which disposed of profits and dividends with relatively slight government interference."

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102. In reciting the events in May, 1938, KIDO testified, ". . . during the session of the Diet various criticisms were hurled against HIROTA, Koki, Minister of Foreign Affairs, in connection with the statement, issued by the government, refusing to deal with Chiang Kai-shek any more." 331. The prosecution argues that one criticism at a budget meeting in February 1938 was of a different kind than KIDO As shown above KIDO made no suggestion suggests. as to why HIROTA was criticised. The exhibit corroborates KIDO. The fact that KIDO did not hear one of the criticisms at a budget meeting was fully explained by 333. and is subject to no KIDO on cross-examination, criticism.

330. T. 25100. 331. Aff. par. 94, T. 30847. 332. Par. JJ-34, T. 41073. 333. T. 31491 - 31492.

IX.

EVENTS WHILE KIDO WAS MINISTER OF WELFARE:
May 26, 1938 - January 5, 1939.

103. When the government began to realize that the breaking off of peace negotiations with Chiang-Kai-shek on January 14, 1938, was improvident, KIDO assisted in the efforts to reconstruct the Cabinet in May 1938 for the purpose of preparing for the breaking of the impasse which had been caused by the statement of not dealing with the Chiang regime. faction was felt with War Minister SUGIYAMA with whom it was found impossible to get in full touch, 335. War Ministry was opposed to any reconstruction of the cabinet but Premier KONOYE and KIDO exerted their best endeavors and vigorously opposed the War Ministry as they were determined to bring about a settlement of the China Affair. The appointment of Lieutenant General ITAGAKI as War Minister was intended for the settlement of the China Affair, while the selection of Mr. UGAKI as Minister of Foreign Affairs was aimed at facilitating a rapprochement with Chiang Kai-shek. 334. Ex. 2261 as cor. by Lang. Sec., T. 38681. 335. Aff. par. 94, T. 30847. 336. Diary May 22, 1938, Aff. par. 94, T. 30846-30848.

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The accused ITAGAKI testified on cross-104. examination that shortly after he was appointed he called on Marquis KIDO, who was then Minister of Welfare, on June 18, 1938, and the general subject of their conversation was how to effect a speedy settlement of the China Incident. KIDO told him at that time that the reorganization of the KONOYE Cabinet was undertaken for the purpose of bringing about a prompt settlement of the China Incident and that KIDO's personal opinion was that the China Incident must be speedily settled.

105. The submission made by the prosecution that KIDO's diary entry of May 19, 1938 is completely misrepresented in his affidavit is not so. The part of the diary entry of May 19, 1938 which was used by the prosecution as a ground to form its submission that KIDO was a party to the later reiteration of the decision in November and December 1938 not to deal with Chiang Kai-shek and that KIDO commits himself to a protracted warfare of about three years in the event peace efforts failed is the quotation of General HONJO's conversation as told by him to KIDO.

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<sup>337.</sup> T. 30330 - 30332. 338. Par. JJ-35, T. 41074. 339. Ex. 2261, T. 16224 as cor. by Lang. Sec. T. 38681.

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In the whole diary entry of May 19, 1938 there is not a single word of KIDO's own opinion regarding the China Affair. KIDO merely said that he agreed generally with HONJO's opinion and promised his efforts. Moreover, the diary entry shows that General HONJO told KIDO about elaborate plans of reviewing the declaration of the government not to deal with Chiang Kai-shek, and that General HONJO also expressed his opinion to KIDO that it was important to settle the China Affair by negotiations with the Chiang regime soon after the battle of Souchow, but in case it failed HONJO stated it would be necessary to enter into protracted warfare by planning to continue for about three years. These were HONJO's words, not KIDO's. This entry is completely misunderstood by the prosecution, owing probably to the insufficient knowledge of the Japanese language and by its interpretation of an English translation thereof.

As testified to by KIDO in his affida-106. KIDO had an interview with the Foreign Minister HIROTA at Premier KONOYE's request on May 23, 1938, and asked HIROTA to think over his resignation. KIDO wrote in his diary of the same day that he felt relieved to hear HIROTA say that he would resign at any time. on May 26, 1938, as shown in his diary, KONOYE and KIDO were at the Premier's room working out various plans to get Mr. UGAKI as the new Foreign Minister and when the report came that Mr. UGAKI had consented, KIDO was so rejoiced he took two pieces of Chinese poetry 12 which KONOYE had composed as "\* \* \* very fine souvenirs Certainly KIDO's efforts to have 13 of the occasion." 14 TGAKI join the cabinet cannot be construed as advocating 15 continuance of the China Incident. Mr. UGAKI testified 16 that when he accepted the post of cabinet minister he 17 asked Premier KONOYE to cancel the KONOYE declaration of January 16, 1938, when the occasion required and made this a condition in acceptance of his post; that 20 Premier KONOYE willingly accepted this condition saying Mr. UGAKI also that it was all right to cancel it. testified on cross-examination by the prosecution that Aff. par. 99, Tr. 30,854. Aff. par. 95, Tr. 30,848-30,849. Diary, May 26, 1938, Aff. par. 96, Tr. 30,849-30,852. Tr. 38,811. 25342. 3#3.

when he became Foreign Minister of the First KONOYE Cabinet the government's policy of not dealing with the Chiang Kai-shek Government was already just a policy in name only. .That is, it existed just in words. Actually informal or private talks were already under way between the Japanese side and the Chinese regime then at Hankow through the channels of the Japanese Consulate General in Hong Kong and the emissaries sent by the Hankow Government to Hong Kong. In the light of these facts certainly KIDO cannot be looked upon as an advocate of the continuance of hostilities with China, or that he specifically agreed with that part of HONJO's statement of planning to continue the incident for three years, in the event peace efforts failed. 107. After the revision of the KONOYE Cabinet in May 1938, KIDO at the suggestion of Prince KONOYE met ITAGAKI and on June 18, 1938, discussed the necessity of terminating the China Affair. ITAGAKI had entered the KONOYE Cabinet at the latter's suggestion 20 and therefore when KONOYE again revealed an intention to resign on December 12, 1938, KIDO believed that this was irresponsible as it placed ITAGAKI on the spot which would not be proper for KONOYE's own sake from 144. Tr. 38,817-38,818. 145. Aff. par. 97, Tr. 30,852. 146. Diary Ex. 3341, Tr. 31,392.

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the standpoint of KONOYE's future politics. It was not to cover up for ITAGAKI as the prosecution claims but to advise KONOYE that KIDO undertook to discuss the matter with ITAGAKIL

108. Whether KONOYE initiated the talk with as related in KIDO's cross-examination when ITAGAKI there was a confusion between the cross-examiner and KIDO as to what date was being discussed or whether KIDO initiated it as shown in his diary is immaterial. The main point is that KIDO felt that to have the cabinet fall at that time when Wang was about to arrive in Japan would bring to naught the realization of the China Incident. Apprehensive of this and thinking of KONOYE's intent to resign KIDO advised him not to do so. KIDO's purpose is indicated in the latter part of his diary entry. Later the HIRANUMA Cabinet continued negotiations with the Wang regime and endeavored to bring the China Incident to an end by getting the Chiang regime and the Wang regime to a compromise merger through the Tang regime. The details of this were also fully explained by SHIMIZU.

109. KIDO testified that on August 9, 1938,

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Par. JJ-40, Tr. 41,080.

Tr. 31,394, 31,395. Ex. 3341, Tr. 31,392. 350.

Tr. 22,260-22,270; See also Ex. 2586, 2587, 2588, Tr. 22,274-22,277.

the standpoint of KONOYE's future politics. It was not to cover up for ITAGAKI as the prosecution claims but to advise KONOYE that KIDO undertook to discuss the matter with ITAGAKI;

Whether KONOYE initiated the talk with as related in KIDO's cross-examination when there was a confusion between the cross-examiner and KIDO as to what date was being discussed, KIDO initiated it as shown in his diary is immaterial. The main point is that KIDO felt that to have the cabinet fall at that time when Wang was about to arrive in Japan would bring to naught the realization of the China Incident. Apprehensive of this and thinking of KONOYE's intent to resign KIDO advised him not to do so. KIDO's purpose is indicated in the latter part of his diary entry. Later the HIRANUMA Cabinet continued negotiations with the Wang regime and endeavored to bring the China Incident to an end by getting the Chiang regime and the Wang regime to a compromise merger through the Tang regime. The details of this were also fully explained by SHIMIZU.

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<sup>347.</sup> Par. JJ-40, Tr. 41,080.

<sup>349.</sup> Tr. 31,394, 31,395. 350. Ex. 3341, Tr. 31,392.

<sup>352.</sup> Tr. 22,260-22,270; See also Ex. 2586, 2587, 2588, Tr. 22,274-22,277.

he heard from KONOYE that Germany had submitted serious proposals for the conclusion of a military alliance. KONOYE's report of this is set forth in KIDO's Diary. KIDO was not shown any draft of the proposal and expressed no opinion about it in his diary except to say, "It is a serious matter." KIDO was not a member of the Five-Ministers' Conference and did not know the details of their meetings, as corroborated by UGAKI The prosecution in support of its o contention that he did, merely refers to a large section of its general summation, which we submit does not support its contention. As shown in KIDO's diary of December 17, 1938, KONOYE again wanted to resign because of the acts of OSHIMA in Germany and others desiring to make an agreement of a military alliance and a deviation from the policy which had been formerly adopted at the Five-Ministers' Conference concerning the intensification of the Anti-Comintern Pact.

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THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1500, after which the proceedings were resumed as follows:)

<sup>353.</sup> Ex. 2662, as cor. by Lang. Sec. Tr. 16,225. 354. Tr. 38.829.

<sup>355.</sup> Tr. 28,489-28,490; Tr. 28,486-28,487. 356. Aff. par. 109, Tr. 30,866.

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MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: Continuing KIDO's summation, page 92:
110. KIDO's testimony that he opposed this
alliance was corroborated by SHUDO as follows:

"I remember that Marquis KIDO told me that although he was not a member of the Five Ministers' Conference, the matter being so important he had heard about this matter, and told me about the domestic situation in regard to this proposed pact, adding that he, himself, feet that this proposel should not be a 357 carried through."

Even though KONOYE did participate in the HIRANUMA Cabinet as Minister without portfolio, it is quite apparent that KIDO cannot be held criminally responsible for that. KIDO was not the Foreign Minister in the HIRANUMA Cabinet, but entered it as Home Minister. He was not a member of the Five Ministers: Conference and never meddled in the details of the conference, nor is there any evidence that he did. KIDO's testimony is also corroborated by KONOYE's 358 Memoirs. The prosecution's interpretation of

357. T. 35,446. 358. Ex. 2735-A, T. 24,290-24,291. KIDO's Diary of December 17,1938 is inaccurate. 111. KIDO is accused as being directly responsible for Japan's proceedings with regard to opium from the time he became Welfare Minister in 360 the First KONOYE Cabinet. Only minor direct evidence involving KIDO is cited by the prosecution -KIDO's diary for December 12, 1938 - which the prosecution offered in evidence but it did not deem it of sufficient importance to read that part of the entry which referred to the Opium Committee. KIDO was not cross-examined about it and there is no evidence of what transmired at that one particular committee meeting. Witness KAMEYAMA, Koichi, testified that the Opium Committee was established by the Opium Committee Organization Regulation Imperial Ordinance No. 38, March 31, 1931, and that this Committee was merely a consultant organ to investigate and consider matters relating to opium and narcotics in response to the request of the Ministries concerned. was only Chief Secretary to the Lord Keeper of the Privy Seal when that committee was organized. Par. JJ-50, T. 41,088. Par. JJ-38, T. 41,076-41,077. Ex. 3341, T. 31,392. Ex. 3335, T. 30,624.

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X. EVENTS WHILE KIDO WAS HOME MINISTER
JANUARY 5, 1939-AUGUST 28, 1939

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112. The First KONOYE Cabinet resigned en bloc on January 4, 1939. After HIRANUMA received the Imperial Command to form a succeeding Cabinet, he requested KIDO to accept the Portfolio of Home Affairs in his Cabinet. The prosecution argues that KIDO's statement in his diary that he accepted this position on condition that he could "dispose of the many different pending problems in the Ministry at my discretion" is irreconcilable with his statement when he became Minister of Education, that he was anxious to receive information, suggestions and opinions so that he could make proper decisions. This is a trivial matter with no merit. Furthermore, the outgoing Minister of Home Affairs, Admiral SUETSUGU, was a Fascist devotee of international fame and when KIDO accepted the Home Ministry there was an atmosphere surcharged with Fascism prevailing among the Home Ministry bureaucrats. When the HIRANUMA Cabinet was formed there was pending a troublesome question for the Home Ministry in the form of a bill for reforming the municipality system which had been

<sup>363.</sup> Par. JJ-44, T. 41,082. 364. Ex. 2667 and errata, T. 16,233. 365. Aff. par. 89, T. 30,842.

drafted under SUETSUGU's guidance. KIDO decided not to introduce such Fascist legislation. Cabinet approved the decision and the bill died. Not having any evidence to the contrary, the prosecution says that KIDO's statement of the facts is not substantiated by his diary. We refer the Tribunal to diary excerpt of February 17, 1939 and KIDO's We submit if the bill had passed the affidavit. prosecution would have offered it in evidence in rebuttal. 10 The veiled inferences of evil because 113. 11 KIDO and SUETSUGU sat on the same Cabinet are 12 unsubstantiated in law and in fact. As Honorable 13 Tom Clark, Attorney General of the United States, recently stated, "'Guilt by association' has never 15 been one of the principles of our American jurisprudence." 16 There is no evidence KIDO participated in his appointment. 114. The prosecution assumed on KIDO's 18 cross-examination that KIDO was in favor of the 19 conclusion of the military alliance with Germany and 20 Italy, quoting KIDO's Diary, April 19, 1939, which KIDO wrote that he conferred with Premier HIRANUMA on the military alliance and emphasized that in the 23 366. Aff. par. 111, T. 30,869.

Dept. of the Army Circular 69, December 15, 1947. Ex. 2269, T. 16,235. event of its ending in failure it would have a
dangerous effect on the domestic situation and would
be a decisive disadvantage to the settlement of the
China Incident, and requested the Premier to exert
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his increased efforts. As KIDO stated on crossexamination, the matter was investigated thoroughly
in the Five Ministers' Conference. He also stated
that if the proposed agreement with Germany "\*\*\*was
to be merely to the extent of strengthening the AntiComintern Pact in such a way as would not aggravate
Great Britain and America, I would not oppose it.
That was the attitude I then took."

As KIDO
also stated, there would be no end to a full explanation
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of it.

Partite Alliance Pact and the Navy was opposed to it.

If the Army and Navy came into a frontal clash, the usual coup d'etat and assassination of the Senior Statesmen and leaders of the Government might easily have occurred. KIDO, as Minister of Home Affairs, was apprehensive about such an incident and he endeavored to avert a clash between the Army and the Navy. The latter clearly appears from his affidavit

<sup>25 370.</sup> T. 31,480. 371. T. 31,480

and diary of April 14th, 1939. claims this entry shows KIDO "insisted that the Army and Navy must arrive at some compromise or other and that HIRANUMA must write personal letters to Hitler and Mussolini." There can be no inference that KIDO was in favor of writing these letters to Hitler and Mussolini for the purpose of arriving at an agreement. The diary of April 14th, 1939 shows KIDO suggested to have these letters written to Hitler and Mussolini as "it was quite necessary to tide over this deadlock by all means." We suggest that the Tribunal read this diary entry in full.

116. If a clash occurred between the Army and the Navy at home, riots and disorders would spring up and when China became aware of this breach it would react unfavorably to Japan. It was for this reason that KIDO, in his conversation with Premier HIRANUMA told him that from the viewon April 19th, 1939, points of maintaining public peace at home and settling the China Affair, he desired him to exert his best efforts in dealing with the matter so as not to bring about an unfavorable effect on these problems whether this agreement was concluded or not.

Diary April 14, 1938; Aff. par. 115, T. 30,873. Par. JJ-51, T. 41,089-41,090. Diary Apr. 14, 1939, Aff. per. 115, T. 30,873. Ex. 2269, T. 16,235. 373.

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The prosecution cites HARADA's Diary entry reviewing a talk he is supposed to have had with KIDO on April 20, 1939, claiming that it showed KIDO used intrigue to persuade the Emperor to agree with the Army's views at HIRANUMA's request. HARADA's Memoir of May 5th, 1939 sharply conflicts with the HARADA entry of April 20th, 1939, because the former shows KIDO favored suppression of the Rightists. The unreliability of HARADA's Memoirs is further exemplified in this entry because he says that after listening to KIDO, "\*\*\*I remained silent, \*\*\*" yet he rambles on with what he is supposed to have replied to KIDO, talking about beating to death five or six people. The prosecution, to a certain extent, recognized KIDO's position in saying that KIDO desired to avoid quarrels in Japan.

118. To brand KIDO as holding the Emperor secretly in some contempt. (although if he told HARADA, it no longer was a secret; SAIONJI would have known it), because of a three-line statement appearing in HARADA's Diary would necessitate discarding all the evidence showing a lifetime of effort and devotion

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Ex. 3799-A, T. 37,789. Ex. 3800-A, T. 37,808. Par. JJ-51, T. 41,090. Par. JJ-12, T. 41,056. 24

displayed by KIDO in assisting the Emperor to the best of his ability. HARADA's statement is inconsistent with all of KIDO's thoughts expressed in his diary of fifteen years, all of his acts, all of his testimony and all of the other evidence in this case, either documentary or oral on KIDO's assistance to the Emperor. KIDO's thoughts about the Emperor are recorded in his own diary of April 14, 1939 which was six days before HARADA's statement which he said KIDO made "at one time or another\*\*\*."

strengthening of the alliance between Japan, Germany and Italy was being discussed. KIDO as Home Minister was worried about a frontal clash between the Army 383 and the Navy and perhaps a coup d'etat. KIDO records this in his diary of April 14, 1939, and then records his regard for the Emperor as follows:

"Besides, to think that the Emperor who has been concerned about the transaction of the incident, irrespective of day and night, should feel more lonely by that. It is unbearable even to suppose. When we think of this and that, we clearly see that it is a duty of a subject, to defy and exclude all the difficulties

<sup>381.</sup> Aff. par. 115, T. 30,873. 382. Ex. 3799-A, T. 37,791. 383. Aff. par. 115, T. 30,873.

not to bring about such circumstances which point, I have already told to the Premier and War Minister."

120. If HARADA and Prince SAIONJI had believed that KIDO held the Emperor in secret contempt, would they, as well as the others, such as Prince KONOYE, Lord Keeper YUASA and Premier YONAI, who were all close to the Emperor and Prince SAIONJI have recommended KIDO as Lord Keeper of the Privy Seal? KIDO's Diary of May 8, 1940, May 31, 1940, June 1, 1940 records these recommendations. HARADA's statement of what KIDO is supposed to have said is fantastic and in view of Mrs. KONOYE's testimony, the Tribunal should refuse to accept it as accurate.

121. The unreliability of HARADA's Memoirs and the danger of relying on hearsay evidence is clearly demonstrated again by an examination of HARADA's excerpts of April 22, 1939 and May 5, 1939 and the prosecution's conclusions based on these excerpts. The first excerpt is a report of some gossip HARADA heard, "\*\*\*it was said\*\*\*" that KIDO had said to someone not named that instead of changing the Emperor's views, he was to be forced to acquiesce by a threat of Cabinet

Aff. par. 129, T. 30,890. Aff. par. 136, T. 30,891. 24 25

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Aff. par. 136, T. 30,891. Ex. 2276, T. 16,248. Ex. 3799-B, T. 37,804. Ex. 3800-A, T. 37,808

resignation. Comingled with this is HARADA's views and interpretations. In the entry of May 5, 1939, HARADA reports a conversation he had with KIDO on April 24, 1939. (Prosecution erroneously states the conversation was held on May 5, 1939. 390) this conversation was only two days after HARADA had heard the gossip of April 22, 1939. HARADA says in the excerpt of May 5th, 1939:

"When I called on KIDO on the morning of the 24th, he seemed to have greatly changed his attitude and said: 'There is no alternative but to recall both Ambassadors T.N. OSHIMA and SHIRATORI at all cost. If this should happen to influence the peace and order within the nation, I intend to control matters suitably, and I expect to suppress the Rightists myself. "

122. As testified to by NAKAMURA of the Home Ministry, the rightists and leftists were treated and controlled in the same manner. obvious HARADA's undisclosed informant of April 22 misinformed him of KIDO's views and actually KIDO's attitude at all times was against the rightists. The prosecution after referring to these two excerpts from HARADA's Diary suggests that the Tribunal accept 390. Par. JJ-15, T. 41,058. 391. T. 18,524.

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the gossip contained in the entry of April 22, 1939 as showing KIDO held the Emperor in some contempt.

123. Since KIDO's own conviction, according to the prosecution's evidence, was that the rightists should be suppressed, how can the prosecution conclude that KIDO's mission was "\*\*\*to guide the Emperor into a more sympathetic attitude towards the views of the Army and the right wing." How can the prosecution genuinely further argue that, "This, we submit, is the key to his whole course of action after he became Lord Keeper in June, 1940."

124. The prosecution interprets these HARADA Memoirs so as to fit them in with its theory in a chronological order as is found in its claim, "On May 5th HARADA records that he (KIDO) had changed his attitude since April 20th and was advocating the recall of OSHIMA and SHIRATORI but this was the day after HIRANUMA's letter to Hitler, which was not acceptable The prosecution quotes HARADA's Memoir As related above this excerpt clearly of May 5, 1939. shows that HARADA is reporting a conversation with KIDO which was on the morning of the 24th. This shows that KIDO was advocating the recall of OSHIMA and

392. Par. JJ-12, T. 41,056; Par. JJ-15, T. 41,058.
393. Ex. 3800-A, T. 37,808.
394. Par. JJ-12, T. 41,056.
395. Par. JJ-51, T. 41,090-091. 396. Ex. 3800-A, T. 37,808.

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SHIRATORI ten days before, not the day after, HIRANUMA's letter to Hitler. 124 . As its concluding argument that KIDO was not an opponent of the military alliance, the prosecution, after citing KIDO's Diary of May 2, 1939, and August 4, 1939 and another memoir of HARADA's of August 10, 1939, the latter, of course, being 6 totally unreliable states, "It is particularly significant that he was urging compromise, not only to ITAGAKI, who favored full military alliance, but to YONAI, who opposed it." KIDO did not urge YONAI to compromise and KIDO's Diary entry of May 2, 1939, cited by the 11 401 prosecution, shows that he did not urge him to compromise. 12 This entry shows that KIDO called on the Navy Minister 13 and exchanged views as to how to save the situation. 14 15 KIDO records: 16 "I stressed that there is no reason to force 17 the conclusion of the Military Alliance, as it depends 18 on the will of the other parties." 19 This definitely shows that KIDO was not 20 eager for the conclusion of the alliance. He further 21 22 records: Ex. 2270 as Cor. by Lang. Sec., T. 16,235. Ex. 2271 as Cor. by Lang. Sec., T. 16,237. Ex. 3807-A, T. 37,846. 23 24 Ex. 3807-A, T. 37,846. Par. JJ-51, T. 41,091. Ex. 2270 as Cor. By Lang. Sec., T. 16,235. 400. 401.

"But if it fails after so much effort, it would not only have a bad influence on our policy towards the Sino-Japanese Incident, but it would inevitably bring about a feeling of uneasiness and dissatisfaction on the part of the people, especially if the main cause of failure was due to disagreements between the Army and Navy on such an important national policy. Therefore it must be avoided by all means. And so we must do our utmost to unify public opinion as far as possible, even if we should fail to conclude the Treaty. The Navy Minister was entirely of the same opinion and promised me to exert himself to follow the above line."

An assertion that this diary excerpt shows that KIDO was urging YONAI to compromise is beyond comprehension. It definitely shows that KIDO was pointing out to YONAI the possibility of trouble which would arise at home and the bad influence therefore toward the Sino-Japanese Incident if the treaty failed, and that, therefore, public opinion should be unified in such an event. No suggestion of any compromise was made to YONAI and as shown, YONAI agreed with KIDO's opinion.

125. If he urged a compromise, as the prosecution says, what terms did he urge? His talk with YONAI paralleled the talk he previously held with KIDO had no ob-Premier HIRANUMA on April 19, 1939. jection to the spirit of the Anti-Comintern Pact between Japan, Germany, and Italy though he did not plan He testified that as mentioned in his diary he it. was of the opinion that, setting aside strengthening the Anti-Comintern Pact, there would be no necessity for Japan to go so deep as to conclude a military alliance It was Von Ribbentrop, between Germany and Italy. German Foreign Minister, who proposed to Japan the strengthening of the Anti-Comintern Pact to the extent (402. Ex. 2269, T. 16235. 31480. 31548; Ex. 2270, T. 16235.)

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of the conclusion of a military alliance. With respect to this, Japan was in a passive attitude. HIRANUMA Cabinet referred the question to the so-called Five Ministers' Conferences, of which KIDO was not a component member. The Five Ministers' Conference met in session more than seventy times and yet failed to reach an agreement of views due to the Navy's stout opposition to the projected alliance with Germany which the Army zealously advocated. This made the Army impatient so that it started political warfare outside of the government. The result was a very precarious condition involving the maintenance of peace and order at home. As shown in KIDO's Diary of April 14, 1939, received a report from the police officials of the Vice-Ministry of Home Affairs regarding the uneasiness of the military due to the deadlock. If the Army and Navy clashed on this question the favorite coup d'etat and assassination of officials close to the throne and Senior Statesmen who were branded as advocates of maintenance of the status quo or pro-British and pro-American leaders would probably result. Naturally KIDO was apprehensive. It was for this reason that KIDO called on the Navy Minister YONAI on May 2nd as related above.

(405. Aff. par. 112, T. 30871. 406. Aff. par. 115, T. 30873.)

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In July, 1939, it was rumored in 126. political circles that the Army and Navy were still disagreeing with one another and consequently the Army became more impatient and was planning to lead the Cabinet to resignation en bloc by having the Minister of War resign and to proclaim martial law by taking advantage of that opportunity, and thus finally to establish a military government. KIDO as Home Minister, considered that if the Army took such measures public peace and order at home would be seriously endangered, so he told War Minister ITAGAKI to that effect to urge him to reconsider the matter, as is shown in KIDO's Diary for August 4, 1939. It is, therefore, apparent that KIDO urged neither YONAI nor ITAGAKI to compromise, as claimed by the prosecution. That there was every possibility of internal disturbance of alarming proportions may be clearly seen from the message which was specially granted by the Emperor to General ABE on August 28, 1939, when he commended him to form a succeeding Cabinet following the resignation of the HIRANUMA Cabinet. "Discretion must be used in choosing the Home Minister and the Justice Minister as the maintenance of public order was of supreme importance." Aff. par. 122, T. 30881. Pros. Ex. 2271 as Cor. by Lang. Sec. T. 16237. Ex. 2272, T. 16240.)

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The prosecution's argument is difficult 127. to follow. It claims that the evidence shows that "KIDO insisted that the Army and Navy must arrive at some compromise or other," but it also concludes that KIDO wanted the Alliance concluded. But the resume of the evidence definitely established that KIDO never wanted the Alliance concluded. He only feared that if the Alliance failed owing to a head-on clash of the Army and Navy, it would have a very bad effect not only on the domestic situation, but also on the settlement of the China Incident, and he pointed this out to Navy Minister YONAI, Premier HIRANUMA, Minister ITAGAKI and urged them all to take these questions into consideration, as KIDO was Home Minister at that time and the internal situation in Japan was under his competence. His concern was with the home situation, not the Alliance.

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128. In its summation of KIDO the prosecution dogmatizes that a Minister who permitted the Five Ministers' Conferences to make decisions of national policy and who did not repudiate those decisions is equally responsible therefor as though he himself had

(410. 411.

Par. JJ-51, T. 41088; Par. JJ-35, T. 41074. Par. JJ-65, T. 41105; Par. JJ-36, T. 41075-6. Ex. 2269, T. 16235. Ex. 2270, T. 16235 as Cor. by Lang. Sec. T. 16235. Ex. 2271 as Cor. by Lang. Sec. T. 16237.) 412. 413.

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participated in the decision. No responsibility can therefore attach to KIDO with respect to the Five Ministers' Conferences regarding the military alliance between Japan, Germany and Italy because the HIRANUMA Cabinet resigned en bloc before any conclusion was arrived at regarding the military alliance. Furthermore, ARITA testified on cross-examination that inasmuch as the decisions of the Five Ministers' Conferences were not reported to the Cabinet as a whole, there could not have been the possibility of the Cabinet approving it.

129. By way of footnote, not mentioned or referred to in the body of its individual summation of KIDO, the prosecution apparently claims that KIDO has some criminal responsibility for the enactment of the Apparently the prosecution does Motion Picture Law. not really attach much significance to this because the Motion Picture Law which was enacted on April 5, 1939, was not even read by the prosecution. As shown on its face, this law provided for a system of licensing for the production and distribution of pictures which would contribute to advancing national culture. NAKAI, prosecution witness, testified that it was not until 1940 (after KIDO was out of the Cabinet) that a ruling

(415. T. 28496. 416. Par. JJ-34, T. 41073; Par. F-91, T. 39436; Ex. 155, T. 1315; Ex. 147, T. 1157. 417. Ex. 155, T. 1315.)

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was made by the Ministry of Eduction after which about one-third of the pictures were devoted to subjects such 418 as national defense, etc. Defense witness KIDO, Shiro, testified that the military attached no importance to propaganda by motion pictures between 1938 and 1941, and that the only censorship was the deletion of parts of the pictures contrary to public morals and order.

130. Although KIDO is charged in the Indictment with the responsibility for the Changkufeng Incident of June, 1938, and the Nomanhan Incident in 1939, no mention is made by the prosecution in its individual summation against KIDO of any of the facts setting forth his participation in these two incidents. Strangely, the prosecution in its individual summation against KIDO asks for a conviction against him on the Counts in the Indictment referring to these two incidents. The prosecution in its general summation of the KIDO's testimony on these Russian phase does not. points is contained in his diary and affidavit. Perhaps the prosecution failed to comment on the evidence of these incidents in connection with KIDO in its individual summation against him because his attitude against war is clearly expressed in his diary of August (418. T. 1200.

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419. T. 18601-05. 420. Par. H-193 to H-203, T. 39961-74. 421. Aff. par. 99, 100, 120, T. 30854-5, 30877.) 2, 1938, in reporting the decision of the Cabinet. The prosecution refers to a statement 131.

that KIDO is supposed to have said to HARADA at the end of July, 1938, with regard to the Emperor's actions in connection with the conversation of ITAGAKI and the Emperor about the Changkufeng Incident. KIDO was not confronted with this document on cross-examination. In view of the dubious nature of the HARADA Memoirs it is most doubtful that KIDO ever made such a blunt remark attributed to him by HARADA. The uncontradicted evidence as shown in KIDO's Diary is that KIDO joined in the cabinet decision to stop the Changkufeng Incident from spreading. Part of the same HARADA Memoir entry to which the prosecution which the prosecution refers did not offer in evidence, but which was read at the request of the defense, states that KIDO told HARADA, "If the Army says that we will have to fight with Russia, then I will recommend KONOYE to resign resolutely. Premier was also of that determination."

Aff. par. 100, T. 30854-5; 37758. (422.

Ex. 3793-A, T. 37754. Aff. par. 100, T. 30854. Ex. 3793-A, T. 37754.

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132. In his diary of August 28, 1939
among other events, KIDO records that when General
ABE was asked to form a cabinet, the Emperor had given
General ABE three instructions:

"(1) Fither UMEZU or HATA should be appointed War Minister.

427. Ex. 2272 and errata, tr. 16,240

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"(2) Diplomatic policy should follow the line of cooperation with Britain and the United States.

"(3) Discretion must be used in choosing
the Home Minister and the Justice Minister as the maintenance of public order was of supreme importance."

ABE told KONOYE of this, and as KONOYE was perplexed as to what to do he asked KIDO for his opinion. KIDO was no longer a cabinet minister at this time. After thinking it over, KIDO gave KONOYE his opinion for transmittal to General ABE. He advised discretion as to points 2 and 3, and on the basis of his experience as Chief Secretary to the Lord Keeper of the Privy Seal, he advised KONOYE on the procedure which could be followed to have either UMEZU or HATA appointed as War Minister since the Emperor had expressed such a desire, and KIDO thought the matter should be handled, so as not to incur trouble to the Emperor. In so far as KIDO was concerned, it was only a matter of procedure. The prosecution's interpretation of KIDO's advice that General ABE should use discretion as to points 2 and 3 as meaning with respect to point 2 "... that ABE could pay just as much or as little attention to it as he thought fit ... " is extremely strained, and apparently devised to suit the prosecu-

428. Aff. par. 124, tr. 30,882.

It is to be noted that the Emperor tion's needs. specifically instructed General ABE to use discretion, that is, caution, prudence, care, as to item 3 and there can be no doubt but that KIDO was using the word in the same sense with respect to item 2. prosecution criticizes KIDO for not dealing with this subject matter, which it calls "the main point" 430 in his diary entry when he testified. The affidavit shows KIDO did deal with it. If it was the main point, the prosecution did not deal with it on its cross-examination of KIDO. It cross-examined him . respecting the appointment of the War Minister, apparently considering that the main point, and KIDO had also dealt with this in his affidavit.

XI

EVENTS WHILE KIDO WAS RETIRED, AUGUST 28, 1939 - JUNE 1, 1940. A NEW PARTY

133. On September 8, 1938, KONOYE discussed with KIDO the question of a new party movement which was coming to the fore. The evidence shows that the Home Ministry had prepared a plan which was patterned in many points after the German Nazi Party. KIDO

429. Par. JJ-16, tr. 41,059 430. Par. JJ-16, tr. 41,059 431. Aff. par. 124, tr. 30,882

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discussed this with Home Minister SUGETSUGU and Justice Minister SHIONO. KIDO expressed his opinion that such a party leadership would be impossible in Japan. After several meetings a draft platform and declaration of the new political party was submitted to the Prime Minister on October 17, 1938. When another conference was called, the Home Office plan was dropped, and instead it was decided to study a movement for a national organization as an organ for conveying the wishes of the ruling to the ruled and vice versa. On November 15, 1938, another conference was had between KIDO and the aforementioned minister, but the cabinet resigned en bloc and no definite plan was worked out.

the question again came to the fore and discussions were being held by the Japanese people on political reconstruction and concentration of political power. Some advocated that all political parties should be merged into a new one. A movement started to have Prince KONOYE preside over the new political party. Early in 1940 KONOYE began to consider these questions seriously, but paid more attention to the movement for national reorganization than his leadership of a new political party. It was his opinion that he could 432. Aff. par. 105, tr. 30,860 - 30,862

prevent the army from advancing politically by concentration and establishment of political power. KIDO was opposed to the one state, one party idea as before. In view of the fact that he was out of office at that time he stood aloof from political circles and he only knew what was happening through information brought to him by his friends from time to time. Count ARIMA spoke with him on or about April 14, 1940, at which time the movement was gathering momentum. Upon a rumor that the YONAI Cabinet was resigning and that Prince KONOYE would be appointed the next Premier, IKEZAKI called on KIDO on May 10, 1940. As the diary entry shows KIDO frankly told him that as long as Prince KONOYE remained in politics, KIDO would assist him by playing a supporter's role, but as far as KIDO himself was concerned, "I had no intention of forming any other new political party." On the other hand, Prince KONOYE, who had found it difficult as Premier of his former cabinet in carrying out his policies because he had no political party, was desirous of obtaining the people's backing in some form in case he was asked to On May 26, 1940, Prince KONOYE, form a new cabinet. Count ARIMA, and KIDO at a dinner discussed the new

433. Aff. par. 130, tr. 30,891 - 30,892 434. Ex. 2274 and errata tr. 16,246 435. Aff. par. 132, tr. 30,893

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party and national reorganization. At this gathering they talked about the union of political parties, but not of "... One State, One Party." KONOYE had strongly opposed this during his first cabinet and the movement had stopped at that time as the result of his efforts. As shown in KIDO's Diary of May 26, 1940, they discussed that after the change of cabinet, consideration should be given to the formation of a new party when the movement for the establishment of it was commenced by the political parties themselves. After the issuance of an Imperial Mandate for a new cabinet, they stated that the following points should be considered:

(1) The establishment of a supreme national defense conference between the chiefs of the General Staff of both the army and the navy, the Premier, and the War and Navy Ministers.

The object of this was to have the Premier take charge of the government based upon the backing of a new political party, namely, public opinion.

(2) As they were still engaged in hostilities with China they believed consideration should be given to the army and navy wishes regarding finances, national defense and foreign affairs, as is shown in

436. Fx. 2275 and errata, tr. 16,247 437. Aff. par. 133, tr. 30,894 the diary, and dissolution of all political parties should be requested. They also suggested that consideration be given to the composition of the cabinet of the Premier, the War Minister, the Navy Minister, and according to circumstances, two or three members of the cabinet; for instance, the Minister of Foreign Affairs, etc., should be appointed. The remainder of the cabinet to be selected from the most able members of the new party. KIDO was not cross-examined on this.

135. Then he was appointed the Lord Keeper of the Privy Seal, he was requested by IKEZAKI to refuse the office of Lord Keeper of the Privy Seal because of the importance of the role KIDO could take in the new party. KIDO refused him, as shown in his diary of 438 June 1, 1940. There is no evidence in the case that KIDO had anything whatsoever to do with that new party or any other party thereafter.

## XII

EVENTS WHILE KIDO WAS LORD KEEPER OF THE PRIVY SEAL FROM JUNE 1, 1940 - NOVEMBER 1945

(a) <u>Duties of the Lord Keeper of the Privy</u>
<u>Seal</u>.

136. In considering the position and duties 438. Ex. 2276 and errata tr. 16,248

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of the Lord Keeper of the Privy Seal attention must be paid first and foremost to the fact that the office of the Lord Keeper of the Privy Seal is set up under provisions of the law governing it as part of the institutions of the Imperial Court - not the cabinet (government), nor the Supreme Command. It is the essence and tradition of Japanese politics to draw a clear line of demarcation between the government and the Imperial Simultaneously with the promulgation of the law governing the organization of the cabinet in 1885, it was stipulated that the Imperial Household Department be established outside the cabinet and that all court affairs be under the jurisdiction of the Minister of the Imperial Household, who was to be held responsible for advising the Emperor on all affairs relating to the Imperial Family. The office of Minister of the Imperial Household sounds like the office of a Minister of State, but in reality there is a vast difference. As the evidence of the various laws show, all officials of the Imperial Household Department are regulated by entirely different legal provisions in their treatment, appointment, and retirement from those regulating the 439. Tr. 674, 675; ex. 95, tr. 17,535, 17,537 440. Ibid 441. Tr. 674 442. Ex. 94, tr. 684, 17,535

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government officials. Simultaneously the Imperial Ordinance relating to the organization of the office of the Lord Keeper of the Privy Seal was promulgated.

It is part of the various institutions of the Imperial Court.

137. Article I of this law stipulates that the office of the Lord Keeper of the Privy Seal shall take charge of the privy and state seals and conduct affairs relating to Imperial rescripts, messages, speeches, and correspondence of the Imperial Court.

Article II stipulates that the Lord Keeper of the Privy Seal shall be personally appointed by the Emperor and shall assist the Emperor, constantly presiding over the office of the Lord Keeper of the Privy Seal.

138. The question may well be asked why a court official of the rank and prestige of the Lord Keeper of the Privy Seal was appointed, especially since he enjoyed no actual powers corresponding to his high rank. The answer to this question is found in the Japanese idea about the seal. As it is well known, the time-honored custom of the Japanese people is to create, modify or cancel their rights and obligations with impressions of their seals. The office of the 443. Ex. 95, tr. 17,535, 17,537

444. Ibid 445. Ibid

Lord Keeper of the Frivy Scal was set up to add to the dignity of taking custody of the privy and state seals.

139. There could be no grosser mistake than to contend that the office of the Lord Keeper of the Privy Seal compares to the British Lord Privy Seal. The latter is a member of the cabinet, resigns with it, and shares a responsibility with it, but the Lord Keeper of the Privy Seal in Japan is not a member of the cabinet but a mere court official. He does not share responsibility with the cabinet nor does he resign with the cabinet. His position might be compared to that of Ponsoby who during the Victorian Era was appointed private secretary by Oueen Victoria and she sought his views upon important occasions.

140. Appendix E to the Indictment describes Marquis KIDO as "chief confidential advisor to the Emperor." It would be a mistake to say that that characterization means that KIDO was responsible for the final and decisive advice to the Emperor on the conduct of state affairs requiring Imperial sanction, including both home and foreign politics and diplomacy. An impartial survey of the Japanese constitution and its political composition reveals that the Ministers 446. Fy. 95, art. II, tr. 17,536 447. Par. JJ-25, tr. 41,065, aff. par. 168, tr. 30,925. 448. Ex. 68, tr. 17,415

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of State are responsible for advising the Emperor on the conduct of state affairs in general under the provisions of the constitution, Article LV: the Chief of Staff of the army and the Chief of Staff of the navy, respectively, advise the Emperor on the conduct of military and naval affairs by virtue of the army and navy General staff regulations; Minister of the Imperial Household Department is responsible for advising the Emperor on the conduct of court affairs under provisions of the law governing the organization of the Imperial Household Department The question might then well be posed: "hat is meant by the "HOHITSU" or assistance of the Lord Keeper of the Privy Seal to the Emperor?

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141. The law and responsibility for advising the Emperor on conduct of state and court affairs and matters of supreme command is clearly fixed, but responsibility of the Lord Keeper of the Privy Seal for The evidence assisting the Emperor does not appear. clearly shows that the Minister of State is responsible to advise the Emperor in connection with the conduct of state affairs on the propriety or otherwise of committing some action, and requests Fis Majesty to The Minister of State does not 452 approve his advice.

<sup>449.</sup> Ex. 78, ex.79, tr.684, 17, 509, 17, 510; ex.3336, tr.30, 626

<sup>450.</sup> Ex. 94, Art. II, tr. 17,535, 684 451. Fx. 95, Art. II, tr. 17,536 452. Fx. 68, Art. LV, tr. 17,475; tr. 36,381, 35,332

submit his advice to the Throne for mere information. Thus the assistance of the Lord Keeper of the Privy Seal is entirely different from the advice of the Minister of State. In his conduct of state affairs the Emperor commits some actions. For that purpose His Majesty must be possessed of a correct judgment on his attitude toward his actions. It is the duty of the Lord Keeper of the Privy Seal to assist the Emperor in the proper way to his judgment, so as to help His Majesty perfect his Imperial virtues. It is not a question of whether it will have any bearing on the conduct of state affairs, but it is the question on what subject to advise the Emperor in connection with state affairs.

142. The side-de-camp system set up in accordance with the law has particular significance in considering the office of the Lord Keeper of the The aide-de-camps were very close to the Frivy Seal. The evidence is that as far as military and naval affairs are concerned, the army and navy made appeals and submitted reports and replies to the 456 Emperor either directly or through their aide-de-camps.

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<sup>453.</sup> Tr. 35, 454. Tr. 36, 455. Tr. 673 24

Aff. par. 144, tr. 30,901; tr. 674

The Lord Keeper of the Privy Seal had nothing to do with their appeals or reports to the throne. All officials of the office of the aide-de-camps to the Emperor were under the jurisdiction of the War and Navy Ministers, having nothing to do with the Minister of the Imperial Household Department. Thus, the army . and navy having direct access to the Emperor was entirely unrelated to the office of the Lord Keeper of The report of the Lord Keeper of the Privy Seal. the Privy Seal to the Emperor is called "gonjo" in Japanese, while that of the Minister of State to the throne is called "sojo" or "joso," as appears in Japanese in the original KIDO Diary.

143. In characterizing KIDO as "chief confidential advisor to the Emperor" the prosecution overlooks its own evidence. The Imperial Ordinance relating to the organization of the office of the Lord Keeper of the Privy Seal contains the words "Joj: Hohitsu" in describing the duties of the Lord Keeper. This has been properly translated as set forth in the exhibit "he shall 'regularly assist' the 'mperor..." Article II, which provides "Joji Hohitsu," lacks such word as "responsibility." The Imperial Ordinance

460. Ex. 95, tr. 17,535, 17,537

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<sup>457.</sup> Tr. 36,511 458. Ex. 1134 as cor. Lang, Sec. tr. 10,668 459. Indictment, Appendix E.

relating to the organization of the Ministry of the Imperial Household in defining the responsibilities of the Ministry of the Imperial Household sets them forth as "Hohitsu," which has also been properly translated in that exhibit where it states that the Minister of the Imperial Household "shall be 'responsible for assistance' to the Emperor." The word "Hohitsu" and its translation of responsibility for advice also applies to the Ministers of State. From this it is quite apparent that the difference in the functions of these officials is entirely due to the fact that the Lord Keeper's assistance was offered to the Emperor only for his information, being entirely at liberty to adopt it or not, whereas the Minister of State and the Minister of the Imperial Household were responsible for the advice they gave. From this it clearly appears that the "Joji Hohitsu" offered by the Lord Keeper of the Privy Seal to the Emperor is not advice but an explanation. 144. Another duty of the Lord Keeper of the Privy Seal which arose through custom was that involving the appointment of a new Prime Minister. duty originally devolved on the Genro, or Elder States-461. Fx. 94, tr. 17,535 162. Fx. 94, tr. 17,535

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The time came, however, when there was only one surviving Genro, Prince SAIONJI. As he advanced in age he declined to submit his views to the throne on that ground, and as shown, it became customary for the Emperor to order the Lord Keeper of the Privy Seal to consult with the Senior Statesmen, as distinguished from the "Genro," or Elder Statesmen, and to submit recommendations to the throne. Then a change occurred the Emperor commanded the Lord Keeper of the Privy Seal to recommend a suitable candidate for the succeeding prime minister, "... after consultation with the Elder Statesmen." It naturally follows, the Lord Keeper of the Privy Seal was not in a position to recommend a candidate of his own choice to the Emperor in case the candidate was opposed by all the Senior Statesmen. If a majority of the Senior Statesmen raised an objection to the candidate of his choice, the Lord Keeper could not recommend the candidate to the Emperor, because it is clear that the Imperial Command signified that due consideration should be paid to the views of all the Senior Statesmen or their majority views. 466. Ibid; Aff. par. 8, tr. 30,724, Diary Apr. 13,1941.
467. Fx. 532, tr.6244-6248; ex. 1277, tr. 11,372; ex. 1282, tr. 11,388
468. Ex. 532, tr. 6249-6256; ex. 1117, tr. 10,186
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cor. Lang. Sec. tr. 11,142

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145. In discussing KIDO and the duties of 169 the Lord Keeper of the Privy Seal the prosecution 2 advances the theory that "as Lord Keeper he developed a new function, that of advising the Emperor on the 4 choice of every new Premier." This contention is conclusively refuted by KIDO's testimony and his diary The prosecution says that the discussions entries. KIDO had with SAIONJI in 1932 "merely show a desire 8 on the part of SAIONJI, owing to his advancing years, 9 to have the assistance of the Senior Statesmen in ever-10 11 Compare this with the diary cising this function ... " 12 entry. In KIDO's Diary of August 26, 1932, KIDO reports 13 a talk he had with the Lord Keeper as follows: 14 "He said when he visited Gotemba the other 15 day, Prince SAIONJI wished in the future the Emperor's 16 inquiries as to a new premier be addressed not to the 17 Genro alone but to a conference of Senior Statesmen 18 which the Lord Keeper shall call and after deliberation 19 the Lord Keeper shall submit an answer to the Emperor... 20 In its resume the prosecution overlooked Prince SAIONJI's 21 inclusion of the Lord Keeper. 22 469. Par. JJ-14, tr. 41,058; Paf. JJ-17, tr:41,059
470. Par. JJ-20, tr. 41,062; par. JJ-24, tr.41,064
471. Aff. par. 40-46, tr. 30,785-30,793; par. 127,
tr. 30,886; par. 145, tr. 30,901; ex. 2273,
Diary Nov. 10, 1939, tr. 16,242
472. Par. JJ-20, tr. 41,062
473. Aff. par. 42, Diary Aug. 26, 1932 23 24

146. A draft of procedure to be used in connection with the Senior Statesmen's Conference prepared by KIDO at the request of the Lord Keeper of the Privy Seal is set forth in his diary of September and December 15, 1932. In order to make the meeting more democratic KIDO had included a provision in the draft that the President of the House of Peers and of the House of Representatives should be included among the Senior Statesmen. Mr. ICHIKI, the Minister of the Imperial Household, objected to this and it was stricken.

147. KIDO testified that the procedure used by him for the appointment of a new prime minister was the same as that "... used by my predecessor, Lord Keeper YUASA except that the Senior Statesmen were to be consulted as a body and not individually and separately." The prosecution claims that there is no evidence that the Lord Keeper was to play any part except perhaps that of a convener in connection with the Senior Statesmens' Conferences before KIDO became Lord Keeper. There is evidence, because, as shown, KIDO so testified. its next sentence the prosecution impliedly admits that 474. Aff. par. 45, tr. 30,790 475. Aff. par. 46, tr. 30,791 - 30,792 476. Ibid

77. Aff. par. 145, tr. 30,902

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KIDO so testified but claims that there was no corroborative evidence that KIDO's "... predecessor had adopted a somewhat similar method." The prosecution has overlooked its own evidence, which disproves its argument. In setting forth the duties of the Lord Keeper of the Privy Seal, the prosecution has admitted:

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"His most important function in late years has been that of recommending to the Emperor a successor premier upon the resignation of a cabinet. In prior years his sole function in this regard was to transmit the decision of the Elder Statesmen or Genro to the Emperor. In 1935, as Prince SAIONJI grew older, upon resignation of the HAYASHI Cabinet the Lord Keeper himself was asked to and did himself make the recommendation after consultation with SAIONJI. This precedent was followed until January, 1940, when the Lord Keeper first determined upon the successor premier after consultation with the individual ex-premiers and thereafter obtained SAIONJI's views." Thus the procedure testified to by KIDO was followed

Premier on January 19, 1940. 24 148. If there was doubt in the prosecution's 478. Par. JJ-20, tr. 41,063 479. Tr. 675 - 676

by his predecessor YUAFA in the selection of YONAI as

mind on this fact, it had an opportunity to either corroborate or contradict it.

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149. Then the affidavit of Count MAKINO, who was former Lord Keeper of the Privy Seal, was offered in evidence the prosecution objected to it and particularly that part on the "... procedure on the appointment of a new premier ... " The objection to the entire affidavit was sustained. If the prosecution had the slightest doubt, would it not have been fairer to permit this affidavit in evidence, crossexamine Count MAKINO, and be of assistance to the Tribunal instead of waiting until summation to raise its argument? The decision on the affidavit of Count MAKINO discouraged the offering of further corroborative evidence on KIDO's behalf. The prosecution even took an unheard of measure in objecting to evidence in mitigation, and continued to do so even efter it was pointed out that such objections were unprecedented.

149-a. Even if KIDO did develop a new function of advising the Emperor on the choice of each new premier, although this is flatly denied, to whe crime alleged in the indictment does that apply?

not take it upon himself to recommend a premier.

480. Tr. 31,617

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149-a. Even if KIDO did develop a new function of advising the Emperor on the choice of each new premier, although this is flatly denied, to what crime alleged in the indictment does that apply? He did not take it upon himself to recommend a premier. 480. Tr. 31,617

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481 was definitely opposed to that. He is even criticized by the prosecution for the one instance during the extremely critical time of April 5, 1945, when he sought advice of more people (army, navy ministers, and the chiefs of staff) before the conferences with the President of the Privy Council and the Senior Statesmen. If KIDO had not consulted the President of the Privy Council and the Senior Statesmen, or if he had consulted them and disregarded their opinions and gave his own recommendation, it would seem that the prosecution then would have something about which to complain. The prosecution does not suggest that KIDO ever misinformed the Senior Statesmen or concealed any facts from them or ever misrepresented any fact to them. Obviously not, because he never did. What other procedure than that which was used would have been logical? If there had been anything morally, politically, ethically or criminally wrong with KIDO's actions in the procedure used or in the statements he made in the conferences with the Senion Statesmen, the prosecution never proved it from the Senior Statesmen themselves. A number of them appeared on the witness stand. may assume the prosecution did not ask them, because 481. Diary Dec. 15, 1932, Aff. per. 46, tr. 30,791 482. YONAI, WAKATSUKI, OKADA, TOJO

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KIDO had done nothing wrong. Any argument that KIDO secured more power for himself would be ridiculous in face of the fact that the recommendations of the Senior Statesmen were always taken by KIDO and reported to the 483 throne. It was not solely KIDO's opinion. A study of each of the Senior Statesmen's Conferences reveals comprehensive discussions by the Senior Statesmen and decisions based on logical reasoning. These men were not rubber-stamp yes-men for KIDO. If they had been, the prosecution would have seized upon this point, and rightly so. The fact that they were not shows how unimportant KIDO really was. It showed he had very little influence, let alone any powerful influence. They were leaders and former premiers of Japan.

150. In the summation offered to the Tribunal on behalf of HASHIMOTO, Kingoro, one of the accused, Prince SAIONJI, Count MAKINO, the Senior Statesmen, KONOYE, KIDO, SUZUKI, SHIGUMITSU, SHIRATORI, INUKAI, ARIMA, SAKAI, and OKABE are represented as controlling politics in Japan, with several of them at various times forming the nucleus of power. No mention, how-

483. e.g. Aff. par. 216, tr. 31,018
484. Diary July 17, 1940, ex. 532, tr. 6249.
Diary July 17, 1941, ex. 1117, tr. 10,667
Diary Oct. 19, 1941, ex. 1154, tr. 11,142;
Aff. par. 216, tr. 30,991 - 31,018
Diary July 17, 1944, ex. 1297, tr. 11,372
Diary Apr. 5, 1945, ex. 1282, tr. 11,388

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ever, is made of the most important fact of the powerful influence of the army chiefs of staff and army politicians who could make and break cabinets by having the War Minister resign or by refusing to appoint a new War Minister. Also overlooked is the fact that of the 17 cabinets from TANAKA in 1927 to SUZUKI in 1945 nine of the premiers were of the fighting services. These facts amply demonstrate that neither KIDO nor any other civilian controlled politics in Japan. 10 151. It is interesting to note that this summation criticizes KIDO's efforts in conjunction with 11 12 Although counsel for HASHIMOTO the Senior Statesmen. 13 correctly states that after the death of Prince SAIONJI and the retirement of Count MAKINO, the choice of a new 15 premier was decided upon by the Senior Statesmen and that their decision was then recommended to the throne 17 y KIDO; on the next page he states that KIDO's adice alone decided the succeeding Prime Ministers upon 19 the collapse of the Third KONOYE Cabinet, which of 20 course is wholly inaccurate. 21 152. Likewise the statement made on behalf of 22 HASHIMOTO, an army man, that KIDO and KONOYE interfered 85. HASHIMOTO Summetion p. 12 24

in the choice of a War Minister at the time of the fall 1 of the HIRANUMA Cabinet is not only remarkable but inaccurate as heretofore shown. The balance of the summation insofar as it theorizes with respect to KIDO's action is, we submit, not compatible with the facts. Need we remind the Tribunal that the evidence in KIDO's case showing his fight against the military obtaining political power in Japan is forcefully demonstrated by the criticism directed against KIDO in the aforesaid 10 summation. 11 I might say, your Fonors, that it is paradoxi-12 cal that the two men are in the same box. 13 153. KONOYE in his memoirs accurately por-14 trayed the effect of the militarists' pressure in 15 politics, which curbed the Premier's efforts, when he 16 said: 17 "Recently Premier TOJO spoke to the Lord 18 Keeper of the Privy Seal KIDO, and sympathetically, 19 that now that he had become Premier he understood for the first time how difficult it was for the previous premiers to do things, and that he himself would to the 22 very end proceed with a duplication of posts; to this 23 I understand the Lord Keeper of the Privy Seal, KIDO, 25

487. Infra. p. 110-111 488. Ex. 2865, tr. 25,671, 25,672

replied that that was not the first time that someone had said this, that it had been exactly the same 2 from the time of the first KONOYE Cabinet, and that, late though it may be, to have the army realize this point was fine." THE PRESIDENT: We will adjourn until halfpast nine I onday morning. (Whereupon, at 1600, an adjourn-ment was taken until Monday, 5 April 1948, at 0930.)